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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 17, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Contents

Federal Register

Vol. 78, No. 149

Friday, August 2, 2013

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
272.....46799
Proposed Rules:
920.....46823

10 CFR
Proposed Rules:
810.....46829

12 CFR
Proposed Rules:
741.....46850
748.....46850

19 CFR
351.....46799

26 CFR
1 (2 documents) 46805, 46807
Proposed Rules:
1 (2 documents) 46851, 46854

33 CFR
100.....46809
165 (4 documents) 46809, 46810, 46813, 46815
Proposed Rules:
165.....46855

34 CFR
Proposed Rules:
Ch. III (2 documents) 46858, 46860

40 CFR
52.....46816
Proposed Rules:
52.....46861

50 CFR
622.....46820
Proposed Rules:
17 (4 documents) 46862, 46889, 47060, 47109
20.....47136
648 (2 documents) 46897, 46903

Rules and Regulations

Federal Register
Vol. 78, No. 149
Friday, August 2, 2013

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 272

[FNS–2009–0024]

RIN 0584–AD91

Supplemental Nutrition Assistance Program: Privacy Protections of Information From Applicant Households

AGENCY: Food and Nutrition Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Food and Nutrition Service (FNS) is issuing this affirmation of a final rule, without change, of an interim rule that amended Supplemental Nutrition Assistance Program (SNAP) regulations at § 272.1, to permit SNAP State agencies to share information with local educational agencies (LEAs) administering the National School Lunch Program established under the Richard B. Russell National School Lunch Act or the School Breakfast Program established under the Child Nutrition Act of 1966, in order to directly certify the eligibility of school-age children for receipt of free school lunches and breakfasts based on their receipt of SNAP benefits.

DATES: *Effective* August 2, 2013, the Department is adopting as a final rule the interim rule published at 76 FR 28165, dated May 16, 2011.

FOR FURTHER INFORMATION CONTACT: Jane Duffield, Chief, State Administration Branch, Supplemental Nutrition Assistance Program, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 818, Alexandria, VA 22302, (703) 605–4385, or *Jane.Duffield@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 16, 2011, the Department published an interim rule implementing a nondiscretionary privacy protection provision of section 4120 of Public Law 110–246, the Food, Conservation and Energy Act of 2008 (FCEA), which amends section 11(e)(8) of the Food and Nutrition Act of 2008 (the Act), 7 U.S.C 2020(e)(8). The revision amended SNAP regulations at § 272.1(c), to make clear that SNAP applicant or recipient information may be used for certifying children for free school meals based on their family's eligibility for SNAP benefits.

Direct certification of SNAP children for the free school breakfast and lunch programs went into effect July 2006 for large school districts and by July 2008 for all school districts. Accordingly, the revision to § 272.1(c) did not change policy, so new State action was not required. USDA also concluded that because implementation of section 4120 was nondiscretionary and specific, and because the rulemaking would not require any changes on the part of State agencies in how they protect information provided by SNAP applicants, it was unnecessary to issue the rule as a proposed rule. The comment period ended on July 16, 2011.

No comments were submitted during the comment period. For reasons given in the interim rule, the Department is adopting the interim rule as a final rule without change.

List of Subjects in 7 CFR Part 272

Alaska, Civil rights, Claims, SNAP, Grant programs-social programs, Reporting and recordkeeping requirements, Unemployment compensation, Wages.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

■ Accordingly, the Department is adopting as a final rule, without change, the interim rule that amended 7 CFR part 272 and was published at 76 FR 28165 on May 16, 2011.

Dated: July 22, 2013.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2013–18597 Filed 8–1–13; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 120424022–3616–02]

RIN 0625–XC001

Use of Market Economy Input Prices in Nonmarket Economy Proceedings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (''Department'') is modifying its regulation which states that the Department normally will use the price that a nonmarket economy (''NME'') producer pays to a market economy supplier when a factor of production is purchased from a market economy supplier and paid for in market economy currency, in the calculation of normal value (''NV'') in antidumping proceedings involving NME countries. The rule establishes a requirement that the input at issue be produced in one or more market economy countries, and a revised threshold requiring that ''substantially all'' (*i.e.,* 85 percent) of an input be purchased from one or more market economy suppliers before the Department uses the purchase price paid to value the entire factor of production. The Department is making this change because it finds that a market economy input price is not the best available information for valuing all purchases of that input when market economy purchases of an input do not account for substantially all purchases of the input.

DATES: This final rule is effective September 3, 2013. It is applicable for all proceedings or segments of proceedings (*e.g.,* investigations and administrative reviews) initiated on or after September 3, 2013.

FOR FURTHER INFORMATION CONTACT: Wendy Frankel at (202) 482–5849, Albert Hsu at (202) 482–4491, or Scott McBride at (202) 482–6292.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 2012, the Department published a proposed modification to its regulations regarding use of market economy input prices in NME

proceedings.[1] The *Proposed Rule* explained the Department's proposal to modify its regulations to establish (1) a requirement that the input at issue be produced in one or more market economy countries, and (2) a revised threshold requiring that ''substantially all'' (*i.e.,* 85 percent) of an input be purchased from one or more market economy suppliers before the Department uses the purchase price paid to value the entire factor of production. The Department received numerous comments on the *Proposed Rule* and has addressed these comments below. The *Proposed Rule,* comments received, and this Final Rule can be accessed using the Federal eRulemaking Portal at *http://www.Regulations.gov* under Docket Number ITA–2012–0002. After analyzing and carefully considering all of the comments that the Department received in response to the *Proposed Rule,* the Department has adopted the modification and amended its regulations.

Explanation of Modification to 19 CFR 351.408

The second sentence of 19 CFR 351.408(c)(1) states that ''{w}here a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary normally will use the price paid to the market economy supplier.'' To implement this rule, the Department is modifying the existing sentence as follows:

''{w}here a factor is produced in one or more market economy countries, purchased from one or more market economy suppliers and paid for in market economy currency, the Secretary normally will use the price(s) paid to the market economy supplier(s) if substantially all of the total volume of the factor is purchased from the market economy supplier(s). For purposes of this provision, the Secretary defines the term ''substantially all'' to be 85 percent or more of the total volume purchased of the factor used in the production of subject merchandise.''

We view these additions as necessary to specify which inputs qualify under this change to our regulations.

The current third sentence of 19 CFR 351.408(c)(1) states ''In those instances where a portion of the factor is purchased from a market economy supplier and the remainder from a nonmarket economy supplier, the Secretary normally will value the factor using the price paid to the market economy supplier.'' The Department is modifying this sentence to read as follows:

''In those instances where less than substantially all of the total volume of the factor is produced in one or more market economy countries and purchased from one or more market economy suppliers, the Secretary normally will weight-average the actual price(s) paid for the market economy portion and the surrogate value for the nonmarket economy portion by their respective quantities.''

We view these changes as necessary to explain the methodology the Department will apply when a respondent purchases less than substantially all of the input from market economy suppliers, or when only part of the input is produced in one or more market economy countries.

Response to Comments on the Proposed Rule

The Department received nine sets of comments on the *Proposed Rule* from numerous parties including domestic producers, foreign exporters, foreign governments, and members of the International Trade Bar. As indicated in the ''Background'' section, these comments can be accessed using the Federal eRulemaking Portal at *http://www.regulations.gov* under Docket Number ITA–2012–0002. The Department analyzed and carefully considered all of the comments received. Below is a summary of the comments, grouped by issue category and followed by the Department's response.

Comment 1: Whether the Department Provided an Adequate Explanation for the Proposed Change

One commenter asserted that the Department did not adequately justify the need for the ''substantially all'' (*i.e.,* 85 percent) requirement in the *Proposed Rule.* The commenter stated that the Department has been using market economy input prices to value the entire input when the total quantity purchased from market economy suppliers is ''meaningful'' (*i.e.,* 33 percent or more of total purchases) for years, and there does not appear to be a reason to stray from that practice.[2] Another commenter argued that the Department in its *Proposed Rule* did not sufficiently explain why it now has concerns regarding the reliability of market economy prices when the quantity purchased is less than 85 percent and questioned why the Department has these concerns, since the Department stated in a recent case that market forces are at play with respect to many prices in China.[3] A third commenter also asserted that the *Proposed Rule* only partially disclosed the reasons for the Department's proposed change.

Response to Comments: The Department has determined to amend its regulations to only allow the application of market economy purchase prices to value the entire input when substantially all of the firm's purchases of that input have been made from a market economy. Upon review of our past practice, we have determined that when a company's purchases from market economy suppliers represent only 33 percent of its total purchases, this amount does not constitute a sufficient quantity to be representative of the input prices that the company would pay to source all of its purchases from market economy suppliers. This is because, when a company purchases an input from multiple sources in multiple economies at different prices, some type of constraint is usually at work. Otherwise, the company would likely meet all of its needs more efficiently by sourcing from the single, lowest-price input supplier. For example, if certain imports represent the lowest prices available, but are limited in quantity, then the company has no option but to purchase the remainder of its input needs from higher-priced domestic sources. On the other hand, if domestic sources represent the lowest prices, but the domestic sources are limited in quantity, then the company might have no choice but to complete its purchases using higher-priced imports. In both cases, because of the supply constraint at work, valuing all of the input at the market price paid for less than the vast majority of total purchases of that input would either overstate or understate the company's input costs. Further, the meaning of ''supply constraint'' can be broadened to cover logistics problems and movement costs, and the outcome would be the same—an overstatement or understatement of the company's costs.

For these reasons, the Department has determined that unless the vast majority of an input need is met with imports from one or more market-based economies, using the market-based purchase prices to value all of a company's inputs (from all sources, foreign and domestic) would be an inappropriate means of valuing factors of production. Accordingly, consistent

[1] *See Proposed Modification to Regulation Concerning the Use of Market Economy Input Prices in Nonmarket Economy Proceedings,* 77 FR 38553 (June 28, 2012) (''*Proposed Rule*'').

[2] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716 (October 19, 2006).

[3] *See Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic—Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy* (March 29, 2007).

with Section 773(c)(1) of the Tariff Act of 1930 (''the Act''), we have concluded that the best available information to value a factor of production using market economy prices is when the market economy input purchases represent substantially all of the total purchases of that input.

Comment 2: Whether the Proposal Meets the ''Best Available Information'' Standard and the United States' World Trade Organization (''WTO'') Obligations

Some commenters asserted that the Department must undertake an analysis to determine the best available information for use in an NME case on a case-by-case basis, whether it is actual market economy purchase prices or surrogate values. They argued that the *Proposed Rule* would preclude the Department from doing this statutorily mandated analysis to determine the best available information when the purchase quantity from market economy producers is less than 85 percent of total purchases of that input. One commenter asserted that the *Proposed Rule* would result in market economy purchase prices being excluded in favor of surrogate values when the 85 percent threshold is not met, which is contrary to the best available information requirement. It also claimed that market economy prices are more reliable than surrogate values.

One commenter also contended that U.S. WTO obligations with respect to the People's Republic of China (''PRC'') demonstrate a preference for using primary information (where market economy prices exist) and require that secondary information (*e.g.,* surrogate values) must be shown to be more reliable and accurate than primary information (*e.g.,* market economy purchase prices) in order to be used. Another commenter also asserted that market economy purchase prices are inherently the best available information, and there is nothing in the statute or the WTO agreements that precludes the use of one producer's market economy purchase prices to value another producer's factors of production.

Response to Comments: The Department finds that this amendment to the Department's regulations comports with U.S. law, and by extension with U.S. WTO obligations, because this modification is designed to ensure that the Department is using the best available information to value the factors of production. As stated in our response to Comment 1 and in the *Proposed Rule,* when market economy purchases of an input do not account for substantially all purchases of the input, the Department finds that a market economy input price is not the best available information for valuing all purchases of that input, particularly since it would not be possible to determine objectively whether the price for the input would have been the same had the firm purchased solely from market economy suppliers. Moreover, the Department will continue to use valid market economy purchase prices [4] if the quantity purchased from market economy suppliers is less than 85 percent of total purchases by weight averaging those values with a surrogate value, using as weights the relative quantities of the input imported and purchased from domestic sources.

We agree with the argument that nothing precludes the Department from using market-based transactions of any number in our calculations, including the statute and WTO agreements. However, just because we are not precluded from using a particular value in our analysis does not mean that the value at issue is the best available or most appropriate on the record. For the reasons stated above, we believe the amended regulation is fully consistent with section 773(c)(1) of the Act.

Comment 3: Whether the Quantity Purchased Affects the Purchase Price

Some commenters asserted that the Department typically examines a single company, whose purchases of an input are unlikely to affect the global price of that input. They assert that only the price of certain commodities might change depending on the quantity of that input that is purchased, whether that may be due to inelastic supply, or if the input is thinly traded. Thus, these parties contended that the Department has provided no justification to now find that the quantity of an input that a firm can purchase will somehow be able to affect the price of that input. These commenters proposed that, if such circumstances exist, the Department could consider limiting the use of market economy purchase prices in those instances, but that does not justify modifying the regulation to use market economy purchase prices only when the quantity purchased is greater than 85 percent.

Response to Comments: As we explained in our response to Comment 1, if a company purchases only a limited quantity of an input from a market economy supplier, it is possible that some supply constraint exists (*e.g.,* the import quantity is limited). Therefore, the Department continues to be concerned that in those cases, the purchased amount does not constitute a sufficient quantity to be representative of the input prices that the company would pay to source all of its purchases from market economy suppliers. On the other hand, if the company is able to purchase the vast majority of the input (*i.e.,* 85 percent or more) from market economy suppliers, the Department does not have such concerns. The Department has therefore concluded that using the market economy purchase price to value all of a company's inputs when those purchases represent only 33 percent of a company's overall purchases of that input would not be the best available information to value the factor of production under examination.

Comment 4: Whether the Proposal Creates Different Standards for NME and Market Economy Producers

Some commenters suggested that the proposal would allow the Department to apply different standards in NME and market economy cases with respect to the use of input prices produced in an NME. They asserted that under the proposal, in NME proceedings the Department will no longer accept the price paid by a firm to a market economy supplier if that input was produced in an NME country. However, these commenters maintained that in market economy proceedings the Department will use a market economy firm's costs of an input that was produced in an NME, unless some exceptions apply. One commenter suggested that if an input was originally produced in an NME that is different from the NME subject to the proceeding, then the Department should accept the purchase price of that input if the firm purchased it from a market economy. Another commenter recommended that the Department accept the market economy purchase price of an input originally produced in an NME unless evidence is presented that shows the NME input producer's records are not kept in accordance with the local GAAP or shows that the price is otherwise distorted.

Response to Comments: The Department agrees that there is a difference between market economy and NME practice with respect to the use of inputs produced in an NME; however, this does not reflect a change from current practice, and this difference in methodology is inherent in the statute. In calculating the cost of production or constructed value in market economy antidumping cases, the statute requires that the Department use the actual costs

[4] *See* Comment 5: Criteria for when the Department will accept a Respondent's Market Economy Purchases.

of purchases and makes no mention of limiting those costs by the country from which an input is purchased.[5] Conversely, section 773(c)(1) of the Act provides that in NME cases the Department shall determine the normal value using a factors of production methodology if the merchandise is exported from an NME and the information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases normal value on the factors of production because the government's extensive role in the economy renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. Accordingly, this argument is not directed at the proposed amendment to the Department's regulations but at the statutory NME provision itself. We therefore find that these comments are outside the scope of the request and to implement such changes would require amendment of the statute. Thus, we have not adopted these suggested changes.

Comment 5: Criteria for When the Department Will Accept a Respondent's Market Economy Purchases

Some commenters support the Department's proposed modification but requested that the Department clarify and/or tighten its current practice with respect to when it will accept a firm's market economy purchase prices. Specifically, some commenters requested that the Department require firms to provide evidence that their inputs were actually produced in a market economy country. These commenters also requested that in finalizing this modification, the Department reiterate that it will not accept market economy purchases: (1) That are dumped; (2) from a country that maintains general export subsidies; (3) that are not ''bona fide;'' or (4) that are purchased from an affiliate. Additionally, one commenter requested that the Department revise its questionnaire to ask firms for detailed information concerning their market economy purchases to aid in the Department's analysis. This commenter advocated that the Department question whether the input purchased reflects the same type, grade, and quality of the input used in the production of the subject merchandise, and whether respondent can demonstrate that the input was actually used in the production of subject merchandise.

Response to Comments: With this modification, the Department will continue its practice of disregarding market economy purchase prices that: (1) May have been dumped (*e.g.,* the country covered by our proceeding has an antidumping measure on the input from the source country); (2) are from a country that the Department has a ''reason to believe or suspect'' maintains general export subsidies; (3) are not reflective of *bona fide* sales based on record evidence; or (4) are otherwise not acceptable for use in a dumping calculation (*i.e.* record evidence demonstrates that the purchases are from an affiliate and are not made at arm's length). The Department has therefore determined that there is no further need to clarify or modify the Department's practice in this regard.

With respect to the comment that firms should be required to provide evidence that their inputs were produced in a market economy country, in the standard NME questionnaire the Department currently requests that respondents provide evidence identifying the country of origin for where each input was produced. Therefore, since the Department already requests such information from respondents, we do not find that such a requirement needs to be included in the modification of the regulation.

Finally, the Department is not revising its questionnaire to require respondents to demonstrate that certain inputs were the actual inputs used in the production of merchandise exported to the United States, and therefore subject to an antidumping duty order. The Department calculates a company's costs of production (in market economy cases) and factors of production (in NME cases) based on the merchandise the company has produced, and not on the market in which such merchandise is sold. The inputs used in the production of subject merchandise are often fungible and thus may be used in the production of merchandise destined for the home market, the United States or other export markets. Indeed, it is the Department's experience that while companies may, in some cases, have the ability to distinguish between otherwise fungible inputs based solely on the source and/or price of the input and the destination of the subject merchandise, the calculation of normal value may also be subject to distortion on this basis.[6] Specifically, a determination of normal value should not depend upon a respondent's ability to demonstrate that it selected particular inputs for use in the production of merchandise destined for the United States versus the production of merchandise sold in other markets, particularly when such a selection might have been based solely on the price of inputs that were otherwise fungible.

For this reason, the Department's NME questionnaire, at Section D, specifically requires that respondents report factors of production information for all models or product types used to produce one unit of the ''merchandise under consideration,'' [7] which the Department defines as merchandise that meets the physical description of the scope of the antidumping duty order, ''regardless of whether or not destined for the U.S. market.'' [8] Accordingly, we are not making the requested change to our questionnaire.

Comment 6: Economic Comparability of Input/Supplier Country

One commenter asserted that the Department should modify the *Proposed Rule* such that in order for the Department to use a market economy purchase price, the market economy input must be purchased from an economically comparable country that is also a significant producer of comparable merchandise, consistent with section 773(c)(4) of the Act.

Response to Comment: The Act contains no requirement that the Department use only market economy purchase prices from a country that is economically comparable to the NME country and also a significant producer of comparable merchandise. Rather, these are requirements imposed when applying surrogate values from a third country. Therefore, we have not adopted this suggested change.

Comment 7: Effective Date

Two commenters requested that the *Proposed Rule* be applied prospectively in order to give parties a chance to change their purchasing behavior. Specifically, they asserted that any such change in practice should only be applied in investigations and/or reviews that cover entries of subject

[5] *See* section 773(b)(3) and 773(e) of the Act.

[6] *See Sulfanilic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 63 FR 63834, 63838 (Nov. 17, 1998) (finding that ''aniline is a generic, fungible input'' and that it did not matter whether it was imported or sourced in China—''the factor to be valued in this case is not 'domestic aniline' but simply 'aniline.' '').

[7] The Department's Section D Questionnaire, at D–1. *See also* D–4 and D–6, which require that respondents provide not only the factors used to produce all models and product types sold to the United States, but also ''the portion of production of those models or product types not destined for the United States.''

[8] The Department's Section D Questionnaire at I–6.

merchandise that entered the United States after the effective date of the change in practice.

Response to Comments: If the Department were to delay implementation as suggested by those commenters, the effect would be a year or more of entries, investigations and reviews not affected by this modification to our regulations. The Department will make this modification effective for proceedings or segments of proceedings that are initiated on or after 30 days following the publication of this Final Rule. This change is intended and designed to ensure that the Department is relying on the best available information to value a firm's factors of production; thus, the Department does not believe that it should delay the effective date of this modification.

Comment 8: Allegation of Clerical Errors

One commenter asserted that the Department made clerical errors in the *Proposed Rule* that need to be fixed. Specifically, this commenter recommended that the Department (1) add the word ''and'' before ''purchased,'' and (2) use a lowercase ''i'' for the word ''if'' in the second sentence of its proposed modification of the regulation.

Response to Comments: The Department notes that these clerical errors appeared in the section of the *Proposed Rule* entitled, ''Explanation of Proposed Modification to 19 CFR 351.408,'' as printed. However, the proposed revised regulatory text at the end of the *Proposed Rule* did not contain these errors. Therefore, the Department has not made any changes to the final modification of this regulation, but it has made the explanation of the final modification clearer based on the typographical errors in the *Proposed Rule.*

Classification

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

Final Regulatory Flexibility Analysis

Pursuant to the requirements of 5 U.S.C. 604, the Department has prepared the following Final Regulatory Flexibility Analysis.

1. A Statement of the Need for, and Objectives of, the Rule

The final rule is intended to revise 19 CFR 351.408(c)(1) to establish that in valuing factors of production in antidumping proceedings involving NMEs, if substantially all of an input is purchased from market economy suppliers as a share of total purchases of that input from all sources during the investigation or review period, the Department will use the weighted-average purchase price paid to market economy suppliers to value all of the input. Further, the final rule is also intended to add a requirement to 19 CFR 351.408(c)(1) that the market economy input at issue actually be produced in one or more market economy countries, and not just be sold through market economy countries.

The legal basis for this final rule is 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; and 19 U.S.C. 1671 *et seq.* No other Federal rules duplicate, overlap or conflict with this final rule.

2. A Statement of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Statement of the Assessment of the Agency of Such Issues, and a Statement of Any Changes in the Proposed Rule as a Result of Such Comments

The Department received no comments concerning the Initial Regulatory Flexibility Analysis or the economic impacts of the rule more generally.

3. The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of Any Change Made to the Proposed Rule in the Final Rule as a Result of the Comments

The Department received no comments from the Chief Counsel for Advocacy of the Small Business Administration.

4. A Description of and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

The final rule regulates entities that are: (1) Producing merchandise in an NME that is exported to the United States and is subject to an antidumping duty order; (2) being individually examined in an antidumping proceeding; and (3) claiming that market economy purchase prices should be used to value a factor of production in the calculation of the exporter's weighted-average dumping margin and antidumping duty assessment rate. The resulting antidumping duty assessment rate determines the amount of antidumping duties to be paid by importers of record of the subject merchandise imported into the United States.

Entities which produce and export merchandise subject to U.S. antidumping duty orders are rarely U.S. companies. Some producers and exporters of subject merchandise do have U.S. affiliates, some of which may be considered small entities under the appropriate Small Business Administration (SBA) small business size standard. The Department is not able to estimate the number of exporters and producer domestic affiliates which may be considered small entities, but anticipates, based on its experience in these proceedings, that the number will not be substantial.

Importers may be U.S. or foreign companies, and some of these entities may be considered small entities under the appropriate SBA small business size standard. There are no means by which the Department can readily determine whether or not a substantial number of small importers will be impacted by this rule, as the effect of the Department's change in methodology will differ from proceeding to proceeding, on a case-by-case basis, and the importers depositing cash deposits and/or paying antidumping duties will also differ from proceeding to proceeding.

5. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

The final rule will require exporters or producers to establish on the administrative record that 85 percent or more of an input has been purchased from market economy suppliers from one or more market economy countries as a share of total purchases of that input from all sources (domestic and foreign) during a particular period of investigation or administrative review, if the exporter or producer wishes the Department to use the weighted-average purchase price paid to the market economy supplier(s) to value all of the input (from all sources). Furthermore, the final rule will require that exporters or producers also establish on the administrative record that the market economy input at issue was produced in a market economy, rather than merely being sold through a market economy supplier. There will be no additional reporting or recordkeeping burdens on U.S. importers as a result of this rule.

6. A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

As required by 5 U.S.C. 604(a), the Department's analysis considered significant alternatives. The alternatives which the Department considered are: (1) The preferred alternative of modifying 19 CFR 351.408(c)(1) to (a) establish that if substantially all of an input is purchased from market economy suppliers as a share of total purchases of that input from all sources during the investigation or review period, the Department will use the weighted-average purchase price paid to market economy suppliers to value all of the input and (b) require that the market economy input at issue actually be produced in one or more market economy countries, and not just be sold through market economy countries; (2) modify the regulation with respect to (1)(a), but not (1)(b); (3) modify the regulation with respect to (1)(b), but not (1)(a); or (4) maintain the *status quo* with respect to the valuation of inputs purchased from a market economy supplier and paid for in a market economy currency.

Factors of production for the subject merchandise will be assigned a value in the calculation of the weighted-average dumping margin and antidumping duty assessment rate, whether the assigned value is a market economy purchase price, a surrogate value from a market economy country, or a combination of the two. Accordingly, the economic impact of providing information and argument to the Department in relation to the valuation of the factors of production for entities individually examined in the Department's antidumping proceedings is roughly equivalent under each of the above-noted alternatives.

In relation to the possible impact of the alternatives on the amount of antidumping duties to be paid by importers of record of the subject merchandise, the value of a factor of production is one of numerous elements in the calculation of a weighted-average margin of dumping. Whether a particular factor value will have any impact on the resulting weighted-average dumping margin is not certain. To the extent that a small U.S. importer will be economically impacted by this rule, it will only be through an increase or decrease in the cash deposits and duties posted by that importer as a result in the change of a weighted-average dumping margin. In those circumstances where a change in the value of an input as a result of this regulatory modification does have an impact on the weighted-average dumping margin, the impact to the small U.S. importer will depend on whether the publicly sourced value is higher or lower than the market economy purchase price(s).

In this regard, the Department is required by section 773(c)(1)(b) of the Act to rely on the best information available for valuing the producer's factors of production. The modification to the regulation addresses the Department's concerns that a market economy input price may not be the best available information when: (1) Market economy purchases of an input are insufficient in proportion to NME purchases for the Department to objectively conclude that the purchase price for the input would have been the same had the firm purchased solely from market economy suppliers and (2) the reported pricing of an NME produced inputs purchased from a market economy supplier (or reseller) can be distorted by NME cost or supply factors. Accordingly, the Department considers that the first, preferred alternative is the only alternative that fully addresses the Department's policy concerns explained in the Background section of this preamble.

Small Business Compliance Guide

In accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, the agency has published a guide to assist small entities in complying with the rule. This guide is available on the Department's Web site at *http://ia.ita.doc.gov/tlei/index.html*.

Paperwork Reduction Act

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of information, Investigations, Reporting and recordkeeping requirements.

Dated: July 22, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

For the reasons stated, 19 CFR part 351 is amended as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

■ 1. The authority citation for 19 CFR part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.;* and 19 U.S.C. 3538.

■ 2. In § 351.408, revise paragraph (c)(1) to read as follows:

§ 351.408 Calculation of normal value of merchandise from nonmarket economy countries.

* * * * *

(c) * * *

(1) *Information used to value factors.* The Secretary normally will use publicly available information to value factors. However, where a factor is produced in one or more market economy countries, purchased from one or more market economy suppliers and paid for in market economy currency, the Secretary normally will use the price(s) paid to the market economy supplier(s) if substantially all of the total volume of the factor is purchased from the market economy supplier(s). For purposes of this provision, the Secretary defines the term ''substantially all'' to be 85 percent or more of the total volume purchased of the factor used in the production of subject merchandise. In those instances where less than substantially all of the total volume of the factor is produced in one or more market economy countries and purchased from one or more market economy suppliers, the Secretary normally will weight-average the actual price(s) paid for the market economy portion and the surrogate value for the nonmarket economy portion by their respective quantities.

* * * * *

[FR Doc. 2013–18547 Filed 8–1–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9626]

RIN 1545–BI84

Certain Transfers of Property to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 337(d) of the Internal Revenue Code. These regulations provide guidance concerning certain transfers of property from a C corporation to a Regulated Investment Company (RIC) or a Real Estate Investment Trust (REIT). These regulations will affect the parties to such transactions.

DATES: *Effective Date:* These regulations are effective on August 2, 2013.

Applicability Date: For date of applicability, see § 1.337(d)–7(f)(2).

FOR FURTHER INFORMATION CONTACT: Grid Glyer (202) 622–7530 or Maury Passman (202) 622–7750 with respect to the corporate issues, and David H. Kirk (202) 622–3060 with respect to the partnership issues (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains an amendment to 26 CFR Part 1. On April 16, 2012, a notice of proposed rulemaking (NPRM) concerning certain transfers of property (converted property) from a C corporation to a RIC or a REIT was published in the **Federal Register** (REG–139991–08; 77 FR 22516). One written comment was received and no public hearing was requested or held. This Treasury Decision adopts the proposed regulations with the changes discussed in this preamble.

Explanation and Summary of Comments

Section 1.337(d)–7 generally provides (in paragraphs (a) and (b)(1)) that if property of a C corporation (the C corporation transferor) becomes the property of a RIC or REIT by the qualification of that C corporation as a RIC or REIT or by the transfer of assets of that C corporation to a RIC or REIT (a conversion transaction), then the RIC or REIT will be subject to tax on the net built-in gain in the converted property under the rules of section 1374 and the underlying regulations (the general rule). The general rule, however, does not apply if the C corporation transferor makes a ''deemed sale election'' provided for under § 1.337(d)–7(c) to recognize gain and loss as if it sold the converted property to an unrelated person at fair market value.

The NPRM proposed to amend § 1.337(d)–7 to provide two exceptions from the general rule. First, the general rule would not apply to the extent that the conversion transaction qualifies for nonrecognition treatment under either section 1031 (relating to like-kind exchanges) or section 1033 (relating to involuntary conversions) (the exchange exception). Second, a conversion transaction in which the C corporation that owned the converted property is a tax-exempt entity (within the meaning of § 1.337(d)–4(c)(2)) would not be subject to the general rule if the tax-exempt entity would not be subject to tax (such as under the unrelated business income tax rules of section 511) on gain resulting from a deemed sale election had such an election been made under § 1.337(d)–7(c)(5) (the tax-exempt exception).

The commenter requested clarification regarding the application of the tax-exempt exception. The IRS and Treasury Department recognize that it may be unclear whether the tax-exempt exception applies to a transaction in which some of the gain resulting from a deemed sale election would be subject to tax if such an election were made, and some of the resulting gain would not be subject to tax. For example, if a tax-exempt entity transferred an asset to a REIT and a portion of the gain resulting from a deemed sale election would be subject to tax under section 511, it may be unclear whether the tax-exempt exception applies to the portion of the gain that would be exempt from tax under section 501(a). Under one interpretation of the proposed regulations, the tax-exempt exception would not apply to any of the gain, including the portion that would be exempt from tax under section 501(a), because a portion of the gain would be subject to tax under section 511.

As noted in the NPRM, the IRS and Treasury Department believe that the general rule should not apply to transfers by tax-exempt entities to the extent that resulting gain (if any) would not be subject to tax under some Code provision were a deemed sale election made. Accordingly, the final regulations clarify that the general rule does not apply to a conversion transaction in which the C corporation that owned the converted property is a tax-exempt entity to the extent that gain would not be subject to tax under Title 26 of the United States Code if a deemed sale election were made. Thus, in the example described, the tax-exempt exception applies to the extent the deemed sale gain with respect to the converted property would be exempt from tax under section 501(a) because that portion of the gain would not be subject to tax under any Code provision had a deemed sale election been made. This is the case even though the tax-exempt exception does not apply to the extent the deemed sale gain with respect to the converted property would be subject to tax under section 511. This clarification is made in a new paragraph in § 1.337(d)–7(d).

The commenter also requested clarification that the exchange exception applies to certain multi-party like-kind exchanges of property involving intermediaries, including ''reverse like-kind exchanges'' in which the replacement property is acquired before the relinquished property is transferred. The IRS and Treasury Department believe that the language of the exchange exception is sufficiently clear and operates to exclude from the general rule any realized gain that is not recognized by reason of either section 1031 or 1033, regardless of the specific transactional form. Accordingly, the IRS and Treasury Department do not believe that any change to the NPRM is necessary on this issue.

In addition, the commenter requested that a new exception to the general rule be added to address the fact pattern in which a REIT purchases appreciated property from a C corporation for cash or other consideration equal to the property's fair market value. According to the commenter, if the REIT does not have a continuing relationship with the C corporation, the REIT would have no way of knowing the extent to which the C corporation might not recognize any gain, whether pursuant to section 1031, 1033, or some other Code provision. Because the REIT's basis in property purchased in an arm's length transaction generally is its cost, the REIT should generally not have any built-in gain in the converted property. Thus, the commenter suggested that this fact pattern should never give rise to a conversion transaction.

The IRS and Treasury Department agree with the commenter that a RIC or REIT that purchases property in an arm's length transaction from a C corporation for an amount of cash equal to the property's fair market value should have a cost basis equal to fair market value. Thus, if the RIC or REIT

subsequently were to sell the property at a gain during the recognition period, the RIC or REIT should be able to establish that the gain recognized is not built-in gain within the meaning of section 1374(d)(3). Accordingly, the IRS and Treasury Department do not believe that any change to the NPRM is necessary on this issue.

Finally, as suggested by the commenter, a reference in § 1.337(d)–7(d)(1) of the NPRM is corrected to refer to section 1033(a)(2) instead of section 1033(b).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations do not create additional obligations for, or impose an economic impact on, small entities. Instead, these regulations provide an additional exception to the current regulations, and thus have a more limited application to all businesses, including small businesses, than the current regulations. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business, and no comments were received.

Drafting Information

The principal authors of these regulations are Grid Glyer and Maury Passman of the Office of Associate Chief Counsel (Corporate). Other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.337(d)–7 is also issued under 26 U.S.C. 337(d) * * *

■ **Par. 2.** Section 1.337(d)–7 is amended by:

■ 1. Revising paragraphs (a)(2), (d)(1), (e), and (f).

■ 2. Adding paragraphs (d)(3) and (d)(4).

The revisions and addition read as follows:

§ 1.337(d)–7 Tax on property owned by a C corporation that becomes property of a RIC or REIT.

(a) * * *

(2) *Definitions.* For purposes of this section:

(i) *C corporation.* The term *C corporation* has the meaning provided in section 1361(a)(2) except that the term does not include a RIC or a REIT.

(ii) *Conversion transaction.* The term *conversion transaction* means the qualification of a C corporation as a RIC or REIT or the transfer of property owned by a C corporation to a RIC or REIT.

(iii) *RIC.* The term *RIC* means a regulated investment company within the meaning of section 851(a).

(iv) *REIT.* The term *REIT* means a real estate investment trust within the meaning of section 856(a).

(v) *S corporation.* The term *S corporation* has the meaning provided in section 1361(a)(1).

* * * * *

(d) *Exceptions*—(1) *Gain otherwise recognized.* Paragraph (a)(1) of this section does not apply to any conversion transaction to the extent that gain or loss otherwise is recognized on such conversion transaction by the C corporation that either qualifies as a RIC or a REIT or that transfers property to a RIC or REIT. See, for example, sections 311(b), 336(a), 351(b), 351(e), 356, 357(c), 367, 368(a)(2)(F), 1001, 1031(b), and 1033(a)(2).

* * * * *

(3) *Special rules for like-kind exchanges and involuntary conversions.*—(i) *In general.* Paragraph (a)(1) of this section does not apply to a conversion transaction to the extent that a C corporation transfers property with a built-in gain to a RIC or REIT, and the C corporation's gain is not recognized by reason of either section 1031 or 1033.

(ii) *Clarification regarding exchanged property previously subject to section 1374 treatment.* Notwithstanding paragraph (d)(3)(i) of this section, if, in a transaction described in paragraph (d)(3)(i) of this section, a RIC or REIT surrenders property that was subject to section 1374 treatment immediately prior to the transaction, the rules of section 1374(d)(6) will apply to continue section 1374 treatment to the replacement property acquired by the RIC or REIT in the transaction.

(iii) *Examples.* The rules of this paragraph (d)(3) are illustrated by the following examples. In each of the examples, X is a REIT, Y is a C corporation, and X and Y are not related.

Example 1. Section 1031(a) exchange. (i) *Facts.* X owned a building that it leased for commercial use (Property A). Y owned a building leased for commercial use (Property B). On January 1, Year 3, Y transferred Property B to X in exchange for Property A in a nonrecognition transaction under section 1031(a). Immediately before the exchange, Properties A and B each had a value of $100, X had an adjusted basis of $60 in Property A, Y had an adjusted basis of $70 in Property B, and X was not subject to section 1374 treatment with respect to Property A.

(ii) *Analysis.* The transfer of property (Property B) by Y (a C corporation) to X (a REIT) is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section. The conversion transaction is a nonrecognition transaction under section 1031(a) as to Y; thus, Y does not recognize any of its $30 gain. Therefore, the conversion transaction is not subject to paragraph (a)(1) of this section by reason of paragraph (d)(3)(i) of this section.

Example 2. Section 1031(a) exchange of section 1374 property. (i) *Facts.* The facts are the same as in *Example 1,* except that X had acquired Property A in a conversion transaction in Year 2, and immediately before the Year 3 exchange X was subject to section 1374 treatment with respect to $25 of net built-in gain in Property A.

(ii) *Analysis.* The Year 3 transfer of Property B by Y to X is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section. The conversion transaction is a nonrecognition transaction under section 1031(a) as to Y; thus, Y does not recognize any of its $30 gain. Therefore, the Year 3 transfer is not subject to paragraph (a)(1) of this section by reason of paragraph (d)(3)(i) of this section. However, X had been subject to section 1374 treatment with respect to $25 of net built-in gain in Property A immediately before the Year 3 transfer, and X's basis in Property B is determined (in whole or in part) by reference to its adjusted basis in Property A. Accordingly, the rules of section 1374(d)(6) apply and X is subject to section 1374 treatment on Property B with respect to the $25 net built-in gain. See paragraph (d)(3)(ii) of this section.

Example 3. Section 1031(b) exchange. (i) *Facts.* The facts are the same as in *Example 1,* except that immediately before the Year 3 exchange Property A had a value of $92, and X transferred Property A and $8 to Y in exchange for Property B in a nonrecognition transaction under section 1031(b).

(ii) *Analysis.* The transfer of Property B by Y to X is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section. Pursuant to section 1031(b), Y recognizes $8 of its gain. Paragraph (a)(1) of this section does not apply to the transaction to the

extent of the $8 gain recognized by Y by reason of paragraph (d)(1) of this section, or to the extent of the $22 gain realized but not recognized by Y by reason of paragraph (d)(3)(i) of this section.

Example 4. Section 1033(a) involuntary conversion of property held by a C corporation transferor. (i) *Facts.* Y owned uninsured, improved property (Property 1) that was involuntarily converted (within the meaning of section 1033(a)) in a fire. Y sold Property 1 for $100 to X, which owned an adjacent property and wanted Property 1 for use as a parking lot. Y had a $70 basis in Property 1 immediately before the sale. Y elected to defer gain recognition under section 1033(a)(2), and purchased qualifying replacement property (Property 2) for $100 from an unrelated party prior to the expiration of the period described in section 1033(a)(2)(B).

(ii) *Analysis.* The transfer of Property 1 by Y to X is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section. The conversion transaction (combined with Y's purchase of Property 2) is a nonrecognition transaction under section 1033(a) as to Y; thus, Y does not recognize any of its $30 gain. Therefore, the conversion transaction is not subject to paragraph (a)(1) of this section by reason of paragraph (d)(3)(i) of this section.

Example 5. Section 1033(a) involuntary conversion of property held by a REIT. (i) *Facts.* X owned property (Property 1). On January 1, Year 2, Property 1 had a fair market value of $100 and a basis of $70, and X was not subject to section 1374 treatment with respect to Property 1. On that date, when Property 1 was under a threat of condemnation, X sold Property 1 to an unrelated party for $100 (First Transaction). X elected to defer gain recognition under section 1033(a)(2), and purchased qualifying replacement property (Property 2) for $100 from Y (Second Transaction) prior to the expiration of the period described in section 1033(a)(2)(B).

(ii) *Analysis.* The transfer of Property 2 by Y to X in the Second Transaction is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section. The Second Transaction (combined with the First Transaction) is a nonrecognition transaction under section 1033(a) as to X, but not as to Y. Assume no nonrecognition provision applied to Y; thus, Y recognized gain or loss on its sale of Property 2 in the Second Transaction, and the Second Transaction is not subject to paragraph (a)(1) of this section by reason of paragraph (d)(1) of this section.

(4) *Special rule if C corporation is a tax-exempt entity.* Paragraph (a)(1) of this section does not apply to a conversion transaction in which the C corporation that owned the converted property is a tax-exempt entity described in § 1.337(d)–4(c)(2) to the extent that gain (if any) would not be subject to tax under Title 26 of the United States Code if a deemed sale election under paragraph (c)(5) of this section were made.

(e) *Special rule for partnerships*—(1) *In general.* The principles of this section apply to property transferred by a partnership to a RIC or REIT to the extent of any gain or loss in the converted property that would be allocated directly or indirectly, through one or more partnerships, to a C corporation if the partnership sold the converted property to an unrelated party at fair market value on the deemed sale date (as defined in paragraph (c)(3) of this section). If the partnership were to elect deemed sale treatment under paragraph (c) of this section in lieu of section 1374 treatment under paragraph (b) of this section with respect to such transfer, then any net gain recognized by the partnership on the deemed sale must be allocated to the C corporation partner, but does not increase the capital account of any partner. Any adjustment to the partnership's basis in the RIC or REIT stock as a result of deemed sale treatment under paragraph (c) of this section shall constitute an adjustment to the basis of that stock with respect to the C corporation partner only. The principles of section 743 apply to such basis adjustment.

(2) Example; Transfer by partnership of property to REIT. (i) *Facts.* PRS, a partnership for Federal income tax purposes, has three partners: TE, a C corporation (within the meaning of paragraph (a)(2)(i) of this section) that is also a tax-exempt entity (within the meaning of § 1.337(d)-4(c)(2)), owns 50 percent of the capital and profits of PRS; A, an individual, owns 30 percent of the capital and profits of PRS; and Y, a C corporation (within the meaning of paragraph (a)(2)(i) of this section), owns the remaining 20 percent. PRS owns a building that it leases for commercial use (Property 1). On January 1, Year 2, when PRS has an adjusted basis in Property 1 of $100 and Property 1 has a fair market value of $500, PRS transfers Property 1 to X, a REIT, in exchange for stock of X in an exchange described in section 351. PRS does not elect deemed sale treatment under paragraph (c) of this section. TE would not be subject to tax with respect to any gain that would be allocated to it if PRS had sold Property 1 to an unrelated party at fair market value.

(ii) *Analysis.* The transfer of Property 1 by PRS to X is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section to the extent of any gain or loss that would be allocated to any C corporation partner if PRS sold Property 1 at fair market value to an unrelated party on the deemed sale date. TE and Y are C corporations, but A is not a C corporation within the meaning of paragraph (a)(2)(i) of this section. Therefore, the transfer of Property 1 by PRS to X is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section to the extent of the gain in Property 1 that would be allocated to TE and Y. Pursuant to paragraph (d)(4) of this section, paragraph (a)(1) of this section does not apply to the extent of the gain that would be allocated to TE if PRS had sold Property 1 to an unrelated party at fair market value on the deemed sale date. If PRS were to sell Property 1 to an unrelated party at fair market value on the deemed sale date, PRS would allocate $80 of built-in gain to Y. Thus, X is subject to section 1374 treatment on Property 1 with respect to $80 of built-in gain.

(f) *Effective/Applicability date*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, this section applies to conversion transactions that occur on or after January 2, 2002. For conversion transactions that occurred on or after June 10, 1987, and before January 2, 2002, see §§ 1.337(d)–5 and 1.337(d)–6.

(2) *Special rule.* Paragraphs (a)(2), (d)(1), (d)(3), (d)(4), and (e) of this section apply to conversion transactions that occur on or after August 2, 2013. However, taxpayers may apply paragraphs (a)(2), (d)(1), (d)(3), (d)(4), and (e) of this section to conversion transactions that occurred before August 2, 2013. For conversion transactions that occurred on or after January 2, 2002 and before August 2, 2013, see § 1.337(d)–7 as contained in 26 CFR part 1 in effect on April 1, 2013.

Beth Tucker,

Deputy Commissioner for Services and Enforcement.

Approved: June 25, 2013.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2013–18695 Filed 8–1–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9627]

RIN 1545–BL04

Mixed Straddles; Straddle-by-Straddle Identification Under Section 1092(b)(2)(A)(i)(I)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains guidance for those taxpayers electing to establish a mixed straddle using straddle-by-straddle identification. These temporary regulations explain how to account for unrealized gain or loss on a position held by a taxpayer prior to the time the taxpayer establishes a mixed straddle using straddle-by-straddle identification. The text of these temporary regulations also serves as the text of the proposed regulations (REG–112815–12) set forth

in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on August 1, 2013.

Applicability Date: For the date of applicability, see § 1.1092(b)–6T(c).

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Bouzis or Robert B. Williams at (202) 622–3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

The Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 494) amended section 1092(b) of the Internal Revenue Code (Code) to add, among other items, an election to establish a mixed straddle using straddle-by-straddle identification (a section 1092(b)(2) identified mixed straddle).

On January 24, 1985, the Treasury Department and the IRS published a notice of proposed rulemaking by cross-reference to temporary regulations (50 FR 3351, January 24, 1985). Included in the temporary regulations was § 1.1092(b)–3T (TD 8008, 1985–1 CB 276), which describes how to account for a section 1092(b)(2) identified mixed straddle. In particular, § 1.1092(b)–3T(b)(6) currently requires that unrealized gain or loss on a position that becomes a position in a section 1092(b)(2) identified mixed straddle be recognized on the day prior to establishing the section 1092(b)(2) identified mixed straddle. After filing of these temporary regulations in the **Federal Register**, § 1.1092(b)–3T(b)(6) will apply to only those section 1092(b)(2) identified mixed straddles established on or before August 1, 2013.

The approach taken in § 1.1092(b)–3T(b)(6) is suggested by the legislative history of section 1092, but it has come to the attention of the Treasury Department and the IRS that this paragraph arguably permits taxpayers to selectively recognize gains and losses in inappropriate circumstances and without market constraints. Thus, for example, a taxpayer could seek to use the identified mixed straddle rules in § 1.1092(b)–3T(b)(6) to accelerate a loss on a position that could not be marked to market or easily disposed of. When taxpayers use the section 1092(b)(2) identified mixed straddle rules to serve as an alternative to selling or otherwise disposing of a position, the general rules governing when gain and loss are recognized are undermined. The Treasury Department and the IRS believe that it is appropriate to act promptly to prevent these types of transactions because they represent a use of section 1092 that was not intended. Accordingly, these temporary regulations add a new § 1.1092(b)–6T and limit the application of § 1.1092(b)–3T as described in this preamble. Section 1.1092(b)–6T will apply to all section 1092(b)(2) identified mixed straddles established after August 1, 2013.

Section 1.1092(b)–6T provides that unrealized gain or loss on a position held prior to establishing a section 1092(b)(2) identified mixed straddle is taken into account at the time, and has the character, provided by provisions of the Code that would apply if the section 1092(b)(2) identified mixed straddle had not been established, rather than on the day prior to establishing the section 1092(b)(2) identified mixed straddle as is required by § 1.1092(b)–3T(b)(6). Section 1.1092(b)–6T does not, however, override other provisions that require the recognition of gain or loss. Thus, for example, if a taxpayer enters into a transaction that creates a constructive sale under section 1259, the rules of section 1259 continue to apply. Under § 1.1092(b)–6T, the provisions of § 1.1092(b)–3T, with the exception of § 1.1092(b)–3T(b)(6), will also continue to apply to changes in the value of a position held after a section 1092(b)(2) identified mixed straddle is established. As a result, pre-straddle gain or loss will be accounted for under other provisions of the Code, while gain or loss incurred while the straddle is in place will be accounted for using the straddle rules in section 1092. Under § 1.1092(b)–6T, the holding period of a position held prior to establishing a section 1092(b)(2) identified mixed straddle will continue to be determined using the rules in § 1.1092(b)–2T.

It is important to account for pre-straddle gain and loss separately from gain and loss on positions while a straddle is in place. Therefore, § 1.1092(b)–6T will continue to require the segregation of pre-straddle and straddle period gain and loss, but it will do so without requiring current recognition of unrealized gain and loss.

Section 1.1092(b)–6T will apply to all section 1092(b)(2) identified mixed straddles established after August 1, 2013, regardless of when any position that is a component of the section 1092(b)(2) identified mixed straddle was purchased or otherwise acquired.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Elizabeth M. Bouzis, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1092(b)–6T also issued under 26 U.S.C. 1092(b)(1).

Section 1.1092(b)–6T also issued under 26 U.S.C. 1092(b)(2). * * *

■ **Par. 2.** Section 1.1092(b)–3T is amended by:

■ 1. Revising the paragraph heading of paragraph (b)(6).

■ 2. Adding a new first sentence to paragraph (b)(6).

The revision and addition read as follows:

§ 1.1092(b)–3T Mixed straddles; straddle-by-straddle identification under section 1092(b)(2)(A)(i)(I) (Temporary).

* * * * *

(b) * * *

(6) *Accrued gain and loss with respect to positions of a section 1092(b)(2) identified mixed straddle established on or before* August 1, 2013. The rules of this paragraph (b)(6) apply to all section 1092(b)(2) identified mixed straddles established on or before August 1, 2013; see § 1.1092(b)–6T for section 1092(b)(2)

identified mixed straddles established after August 1, 2013.* * *

* * * * *

■ **Par. 3.** Section 1.1092(b)–6T is added to read as follows:

§ 1.1092(b)–6T Mixed straddles; accrued gain and loss associated with a position that becomes part of a section 1092(b)(2) identified mixed straddle that is established after August 1, 2013 (Temporary).

(a) *In general.* Except as otherwise provided, if one or more positions of a section 1092(b)(2) identified mixed straddle were held by the taxpayer on the day prior to the day the section 1092(b)(2) identified mixed straddle is established, any unrealized gain or loss on the day prior to the day the section 1092(b)(2) identified mixed straddle is established with respect to such position or positions is taken into account at the time, and has the character, provided by the provisions of the Internal Revenue Code that would apply to the gain or loss if the section 1092(b)(2) identified mixed straddle were not established. Unrealized gain or loss is the difference between the fair market value of the position or positions on the day before a section 1092(b)(2) identified mixed straddle is established and the taxpayer's basis in that position or positions. See § 1.1092(b)–2T for treatment of holding periods with respect to such positions. Changes in value of the position or positions that occur after the section 1092(b)(2) identified mixed straddle is established are accounted for under the other provisions of § 1.1092(b)–3T.

(b) *Examples.* Paragraph (a) of this section may be illustrated by the following examples. It is assumed in each example that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) by an individual calendar year taxpayer during the taxable year and no section 1256 contract is substantially identical to an offsetting non-section 1256 contract. It is also assumed that any gain or loss recognized on disposition of any position in the straddle would be capital gain or loss.

Example 1. On August 13, 2013, A enters into a section 1256 contract. As of the close of the day on August 15, 2013, there is $500 of unrealized loss on the section 1256 contract. On August 16, 2013, A enters into an offsetting non-section 1256 position and makes a valid election to treat the straddle as a section 1092(b)(2) identified mixed straddle. A continues to hold both positions of the section 1092(b)(2) identified mixed straddle on January 1, 2014. Under these circumstances, A will recognize the $500 loss on the section 1256 contract that existed prior to establishing the section 1092(b)(2) identified mixed straddle on the last business day of 2013 because the section 1256 contract would be treated as sold on December 31, 2013, (the last business day of the taxable year) under section 1256(a). The loss recognized in 2013 will be treated as 60% long-term capital loss and 40% short-term capital loss. All gains and losses occurring after the section 1092(b)(2) identified mixed straddle is established are accounted for under the applicable provisions in § 1.1092(b)–3T.

Example 2. On September 3, 2012, A enters into a non-section 1256 position. As of the close of the day on August 22, 2013, there is $400 of unrealized short-term capital gain on the non-section 1256 position. On August 23, 2013, A enters into an offsetting section 1256 contract and makes a valid election to treat the straddle as a section 1092(b)(2) identified mixed straddle. On September 10, 2013, A closes out the section 1256 contract at a $500 loss and disposes of the non-section 1256 position, realizing an $875 gain. Under these circumstances, A has $400 of short-term capital gain attributable to the non-section 1256 position prior to the day the section 1092(b)(2) identified mixed straddle was established. The $400 unrealized gain earned on the non-section 1256 position will be recognized on September 10, 2013, when the non-section 1256 position is disposed of. The gain will be short-term capital gain because, if the non-section 1256 position had been disposed of prior to establishing the section 1092(b)(2) identified mixed straddle, the gain would not have been long-term capital gain. See § 1.1092(b)–2T for rules concerning holding period. On September 10, 2013, the gain of $875 on the non-section 1256 position will be reduced to $475 to take into account the $400 of unrealized gain when the section 1092(b)(2) identified mixed straddle was established. The $475 gain on the non-section 1256 position will be offset by the $500 loss on the section 1256 contract. The net loss of $25 from the straddle will be treated as 60% long-term capital loss and 40% short-term capital loss because it is attributable to the section 1256 contract.

(c) *Effective/applicability date.* The rules of this section apply to all section 1092(b)(2) identified mixed straddles established after August 1, 2013.

(d) *Expiration date.* The applicability of this section expires on August 1, 2016.

Beth Tucker,

Deputy Commissioner for Operations Support.

Approved: June 16, 2013.

Mark J. Mazur

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2013–18702 Filed 8–1–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG–2012–1036]

Safety Zones and Special Local Regulations; Recurring Marine Events in Captain of the Port Long Island Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations for one regatta and seven safety zones for five fireworks displays and two swim events in the Sector Long Island Sound area of responsibility on the dates and times listed in the tables below. This action is necessary to provide for the safety of life on navigable waterways during the events. During the enforcement period, no person or vessel may enter the regulated area or safety zones without permission of the Captain of the Port (COTP) Sector Long Island Sound or designated representative.

DATES: The regulations in 33 CFR 100.100 and 33 CFR 165.151 will be enforced during the dates and times that follow in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Petty Officer Scott Baumgartner, Waterways Management Division, U.S. Coast Guard Sector Long Island Sound; telephone 203–468–4559, email *Scott.A.Baumgartner@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the regulated area listed in 33 CFR 100.100 and safety zones listed in 33 CFR 165.151 on the specified dates and times as indicated in tables that follow. If the event is delayed by inclement weather, the regulation will be enforced on the rain date indicated in tables below. These regulations were published in the **Federal Register** on May 24, 2013 (78 FR 31402).

TABLE TO § 100.100

1.7 Hartford Dragon Boat Regatta	• Date: August 17, 2013 from 7:30 a.m. until 5:30 p.m. and August 18, 2013 from 8:30 a.m. until 4:30 p.m. • Regulated area: All waters of the Connecticut River in Hartford, CT between the Bulkeley Bridge 41°46′10.10″ N, 072°39′56.13″ W and the Wilbur Cross Bridge 41°45′11.67″ N, 072°39′13.64″ W (NAD 83).

TABLE 1 TO § 165.151

8.3 Old Black Point Beach Association Fireworks	• Date: August 17, 2013. • Rain Date: August 18, 2013. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off Old Black Point Beach East Lyme, CT in approximate position, 41°17′34.9″ N, 072°12′55″ W (NAD 83).
8.6 Stamford Fireworks	• Date: August 29, 2013. • Rain date: August 30, 2013. • Time: 8 p.m. to 9:30 p.m. • Location: Waters of Stamford Harbor, off Kosciuszco Park, Stamford, CT in approximate position 41°01′48.46″ N, 073°32′15.32″ W (NAD 83).
8.8 Ascension Fireworks	• Date: August 17, 2013. • Rain Date: August 18, 2013. • Time: 9 p.m. to 10 p.m. • Location: Waters of the Great South Bay off The Pines, East Fire Island, NY in approximate position 40°40′07.47″ N, 073°04′31.73″ W (NAD 83).
9.3 Village of Island Park Labor Day Celebration Fireworks	• Date: August 31, 2013. • Rain Date: September 1, 2013. • Location: Waters off Village of Island Park Fishing Pier, Village Beach, NY in approximate position 40°36′30.95″ N, 073°39′22.23″ W (NAD 83).

TABLE 2 TO § 165.151

1.1 Swim Across the Sound	• Date: August 3, 2013. • Time: 9 a.m. to 7 p.m. • Location: Waters of Long Island Sound, Port Jefferson, NY to Captain's Cove Seaport, Bridgeport, CT in approximate positions 40°58′11.71″ N, 073°05′51.12″ W, north-westerly to the finishing point at Captain's Cove Seaport 41°09′25.07″ N, 073°12′47.82″ W (NAD 83).
1.5 Stonewall Swim	• Date: August 3, 2013. • Time: 8:30 a.m. until 12:30 p.m. • Location: All navigable waters of the Great South Bay within a three mile long and half mile wide box connecting Snedecor Avenue in Bayport, NY to Porgie Walk in Fire Island, NY. Formed by connecting the following points. Beginning at 40°43′40.24″ N, 073°03′41.50″ W; then to 40°43′40.00″ N, 073°03′13.40″ W; then to 40°40′04.13 N, 073°03′43.81″ W; then to 40°40′08.30″ N, 073°03′17.70″ W; and ending at the beginning point 40°43′40.24″ N, 073°03′41.5″ W (NAD 83).

Under the provisions of 33 CFR 100.100 and 33 CFR 165.151, the regatta, fireworks displays and swim events listed above are established as a special local regulation or safety zones. During the enforcement period, persons and vessels are prohibited from entering into, transiting through, mooring, or anchoring within the regulated area or safety zones unless they receive permission from the COTP or designated representative.

This notice is issued under authority of 33 CFR part 100, 33 CFR part 165, and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners or marine information broadcasts. If the COTP determines that a regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: July 18, 2013.

E. J. Cubanski,

Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2013–18618 Filed 8–1–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0612]

RIN 1625–AA00

Safety Zone; Motion Picture Filming; Chicago River; Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary safety

zones on the Chicago River in Chicago, IL. These safety zones are intended to restrict vessels from a portion of the Chicago River due to the filming of a motion picture. These temporary safety zones are necessary to protect the surrounding public and vessels from the hazards associated with the stunt work, rigging, and other hazards involved in the filming of a motion picture.

DATES: This rule will be enforced with actual notice from 4 a.m. on July 21, 2013, until August 2, 2013. This rule is effective in the Code of Federal Regulations from August 2, 2013, until 9 p.m. on August 31, 2013. This rule will be enforced intermittently from 4 a.m. to 9 p.m. daily between July 21, 2013, and August 31, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0612. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, contact or email MST1 Joseph McCollum, U.S. Coast Guard Sector Lake Michigan, at 414–747–7148 or *Joseph.P.McCollum@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because doing so would be impracticable. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with the filming of a motion picture, which are discussed further below.

Under 5 U.S.C. 553(d)(3), The Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

From July 21, 2013, until August 31, 2013, the Coast Guard anticipates that Rozar Pictures, LLC will film scenes for a motion picture on the Chicago River. In late July, stunt work involving wire-suspension is expected to be filmed at the West Lake Street Bridge on the South Branch of the Chicago River. In August, Rozar Pictures, LLC is expected to film the length of the Main Branch of the Chicago River using a low-flying helicopter and/or multiple boats. Also in August, stunts and special effects involving an inflatable boat and two helicopters are expected to be filmed in the vicinity of the North Lake Shore Drive Bridge on the Main Branch of the Chicago River.

The Captain of the Port, Lake Michigan, has determined that this filming event—with associated stunts, boats, and helicopters—will pose a significant risk to public safety and property. Such hazards include the collision of stunt, film, and spectator vessels in a congested area.

Because of the possibility of bad weather on one or more of the filming days listed above, and considering the unpredictability involved in filming stunt work, this rule was written with a wider range of dates and times to give the Coast Guard flexibility to accommodate changes in the film schedule between July 21 and August 21.

C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port, Lake Michigan, has determined that three temporary safety zones are necessary to ensure the safety of persons and vessels during the filming of a motion picture on the Chicago River. These zones are effective from 4 a.m. on July 21, 2013, until 9 p.m. on August 31, 2013. During this date range, these safety zones will be enforced during the time of filming and associated stunt work, between 4 a.m. to 9 p.m. The Coast Guard anticipates that no more than one safety zone will be enforced on a given day. The Coast Guard will issue a Broadcast Notice to Mariners to provide the public with advanced notice of those days that these safety zones will be enforced. The Coast Guard on-scene Captain of the Port Representative will provide actual notice on-scene.

Three safety zones will be established as follows:

(1) All waters of the Chicago River within a 150-yard radius of the West Lake Street Bridge in position 41°53′8.6″ N, 087°38′15.9″ W (NAD 83).

(2) All waters of the Chicago River and Lake Michigan within a 150-yard radius of a position in the vicinity of the North Lake Shore Drive bridge at 41°53′18.8″ N, 087°36′43.1″ W (NAD 83).

(3) All waters of the Chicago River from the West Lake Street Bridge in position 41°53′8.6″ N, 087°38′15.9″ W, then north to an imaginary line connecting positions 41°53′11.6″ N, 087°38′20.5″ W and 41°53′14.0″ N, 087°38′17.2″ W, then east along the main branch of the river to a position of 41°53′19″ N, 087°36′33″ W (NAD 83) in the vicinity of the North Lake Shore Drive Bridge.

Entry into, transiting, or anchoring within the safety zones is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of

Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zones created by this rule will be small and enforced during for a limited time on a limited number of days in July and August. Under certain conditions, moreover, vessels may still transit through the safety zones when permitted by the Captain of the Port. Furthermore, the Coast Guard anticipates that only one of the three safety zones will be enforced on each day.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this temporary rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Chicago River during the times in which the safety zones are enforced in July and August, 2013.

These safety zones will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of these zones, we would issue local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant

Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0612 to read as follows:

§ 165.T09–0612 Safety Zone; Motion picture filming; Chicago River; Chicago, IL.

(a) *Safety Zones.* The following are designated as safety zones:

(1) All waters of the Chicago River within a 150-yard radius of the West Lake Street Bridge in position 41°53′8.6″ N, 087°38′15.9″ W (NAD 83).

(2) All waters of the Chicago River and Lake Michigan within a 150-yard radius of a position in the vicinity of the North Lake Shore Drive bridge at 41°53′18.8″ N, 087°36′43.1″ W (NAD 83).

(3) All waters of the Chicago River from the West Lake Street Bridge in position 41°53′8.6″ N, 087°38′15.9″ W, then north to an imaginary line connecting positions 41°53′11.6″ N, 087°38′20.5″ W and 41°53′14.0″ N, 087°38′17.2″ W, then east along the main branch of the river to a position of 41°53′19″ N, 087°36′33″ W (NAD 83) in the vicinity of the North Lake Shore Drive Bridge.

(b) *Effective and Enforcement Period.* These zones are effective from July 21, 2013, until August 31, 2013. These zones will be enforced on intermittent dates between July 21 through August 31, 2013.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within these safety zones is prohibited unless authorized by the Captain of the Port, Lake Michigan or his designated on-scene representative.

(2) These safety zones are closed to all vessel traffic, except as may be permitted by the Captain of the Port, Lake Michigan or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port, Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Lake Michigan to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zones shall contact the Captain of the Port, Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port, Lake Michigan or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zones must comply with all directions given to them by the Captain of the Port, Lake Michigan, or his on-scene representative.

Dated: July 18, 2013.

M. W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2013–18617 Filed 8–1–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0613]

RIN 1625–AA00

Safety Zone; Evening on the Bay Fireworks; Sturgeon Bay, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Sturgeon Bay, WI. This temporary safety zone will restrict vessels from a portion of Sturgeon Bay due to a fireworks display. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the fireworks display.

DATES: This rule is effective from 8 p.m. until 10 p.m. on August 3, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0613. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, contact or email MST1 Joseph McCollum, U.S. Coast Guard Sector Lake Michigan, at 414–747–7148 or *Joseph.P.McCollum@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

A. Regulatory History and Information

This fireworks display is currently listed within 33 CFR 165.929(a)(55) as being located in position 44°49′33″ N, 087°22′26″ W. However, the Coast Guard was informed that this year's display will be launched from a barge in the vicinity of the Highway 42/57 bridge. Thus, the Coast Guard is issuing this temporary final rule to ensure that a safety zone is established around this year's launch position.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because doing so is impracticable. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable and because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the

Federal Register. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

On August 3, 2013, the Sturgeon Bay Yacht Club will host the annual Evening on the Bay fireworks display. The Coast Guard anticipates a large number of spectators to congregate around the launch position during the display. The Captain of the Port, Lake Michigan, has determined that this fireworks display will pose a significant risk to public safety and property. Such hazards include falling debris, flaming debris, and collisions among spectator vessels.

C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port, Lake Michigan, has determined that this temporary safety zone is necessary to ensure the safety of persons and vessels during the fireworks display in Sturgeon Bay. This zone is effective and will be enforced from 8 p.m. until 10 p.m. on August 3, 2013.

The safety zone will encompass all waters of Sturgeon Bay within the arc of a circle with a 280-foot radius from the fireworks launch site located on a barge in approximate position 44°49′18.57″ N, 087°21′22.19″ W (NAD 83). Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be small and enforced for only one day in August. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Sturgeon Bay on August 3, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of the zone, we would issue local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''For Further Information Contact'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0613 to read as follows:

§ 165.T09–0613 Safety Zone; Evening on the Bay Fireworks; Sturgeon Bay, WI.

(a) *Location.* The safety zone will encompass all waters of Sturgeon Bay within the arc of a circle with a 280-foot radius from the fireworks launch site located on a barge in approximate position 44°49′18.57″ N, 087°21′22.19″ W (NAD 83).

(b) *Effective and enforcement period.* This rule is effective and will be enforced from 8 p.m. until 10 p.m. on August 3, 2013.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Lake Michigan or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port, Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Lake Michigan to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port, Lake Michigan or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Lake Michigan, or his on-scene representative.

Dated: July 18, 2013.

M. W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2013–18614 Filed 8–1–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0606]

Safety Zone; Fireworks Event in Captain of the Port New York Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce safety zones in the Captain of the Port New York Zone on the specified dates and times. This action is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks displays. During the enforcement period, no person or vessel may enter the safety zones without permission of the Captain of the Port.

DATES: The regulation for the safety zones described in 33 CFR 165.160 will be enforced on the dates and times listed in the supplementary information section that follows.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Junior Grade Kristopher Kesting, Coast Guard; telephone 718–354–4154, email *Kristopher.R.Kesting@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones listed in 33 CFR 165.160 on the specified dates and times as indicated in Table 1 below. This regulation was published in the **Federal Register** on November 9, 2011 (76 FR 69614).

TABLE 1

1. Wolfe's Pond Fireworks, Wolfe's Pond Park, Staten Island Safety Zone, 33 CFR 165.160(2.12).	• Launch site: A barge located in approximate position 40°30′52.1″ N, 074°10′58.8″ W (NAD 1983), approximately 540 yards east of Wolfe's Pond Park. The Safety Zone is a 500-yard radius from the barge. • Date: August 30, 2013.

TABLE 1—Continued

2. Scripps Network Fireworks, Pier 60 Hudson River Safety Zone, 33 CFR 165.160(5.1).	• Time: 8:30 p.m.–10:00 p.m. • Launch site: A barge located in approximate position 40°44′49″ N, 074°01′02″ W (NAD 1983), approximately 500 yards west of Pier 60, Manhattan, New York. This Safety Zone is a 360-yard radius from the barge. • Date: October 18, 2013. • Time: 8:15 p.m.–9:27 p.m.

Under the provisions of 33 CFR 165.160, a vessel may not enter the regulated area unless given express permission from the COTP or the designated representative.

Spectator vessels may transit outside the regulated area but may not anchor, block, loiter in, or impede the transit of other vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.160(a) and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and marine information broadcasts. If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: July 17, 2013.

G. Loebl,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2013–18615 Filed 8–1–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0658; FRL–9840–9]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Second Ten-Year Carbon Monoxide Maintenance Plan for Greeley

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: EPA is taking direct final action approving a State Implementation Plan (SIP) revision submitted by the State of Colorado. On March 31, 2010, the Governor of Colorado's designee submitted to EPA a Clean Air Act (CAA) section 175A(b) second 10-year maintenance plan for the Greeley area for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS). This limited maintenance plan (LMP) addresses maintenance of the CO NAAQS for a second 10-year period beyond the original redesignation. This action is being taken under sections 110 and 175A of the CAA.

DATES: This rule is effective on October 1, 2013 without further notice, unless EPA receives adverse comment by September 3, 2013. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2011–0658, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: clark.adam@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2011–0658. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, EPA Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–7104, *clark.adam@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *Colorado* and *State* mean the State of Colorado.

I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Background

Under the CAA Amendments of 1990, the Greeley area was designated as nonattainment and classified as a ''not classified'' CO area because it had been designated as nonattainment before November 15, 1990, but had not violated the CO NAAQS in 1988 and 1989 (56 FR 56694, November 6, 1991). On September 16, 1997, the Governor of Colorado submitted to EPA a request to redesignate the Greeley CO nonattainment area to attainment for the CO NAAQS. Along with this request, the Governor submitted a CAA section 175A(a) maintenance plan which demonstrated that the area would maintain the CO NAAQS for the first 10 years following our approval of the redesignation request. We approved the State's redesignation request and 10-year maintenance plan on March 10, 1999 (64 FR 11775).

On June 20, 2003, the Governor of Colorado submitted to EPA a revised Greeley CO maintenance plan to justify removal of Colorado's motor vehicle emissions inspection program and oxygenated fuels program from the plan; the revised plan demonstrated maintenance of the CO NAAQS in the Greeley area through 2015 without the motor vehicle emissions inspection program and oxygenated fuels program. At that time, the State also submitted revisions to Colorado Air Quality Control Commission (AQCC) Regulation No. 11, ''Motor Vehicle Emissions Inspection Program,'' and AQCC Regulation No. 13, ''Oxygenated Fuels Program,'' to effectuate the removal of both of these programs from the SIP for the Greeley area. The 2003 maintenance plan submittal also included transportation conformity budgets for various years through 2015. We approved all of these changes into the SIP on August 19, 2005 (70 FR 48650).

Eight years after an area is redesignated to attainment, CAA section 175A(b) requires the state to submit a subsequent maintenance plan to EPA, covering a second 10-year period.[1] This second 10-year maintenance plan must demonstrate continued maintenance of the applicable NAAQS during this second 10-year period. To fulfill this requirement of the Act, the Governor of Colorado's designee submitted the second 10-year Greeley CO maintenance plan (hereafter, ''revised Greeley Maintenance Plan'') to us on March 31, 2010. With this action, we are approving the revised Greeley Maintenance Plan.

The 8-hour CO NAAQS—9.0 ppm—is attained when such value is not exceeded more than once a year. 40 CFR 50.8(a)(1). The Greeley area has attained the 8-hour CO NAAQS from 1988 to the present.[2] In October 1995, EPA issued guidance that provided nonclassifiable CO nonattainment areas the option of using a less rigorous ''limited maintenance plan'' (LMP) option to demonstrate continued attainment and maintenance of the CO NAAQS.[3] According to this guidance, areas that can demonstrate design values at or below 7.65 ppm (85% of exceedance levels of the 8-hour CO NAAQS) for eight consecutive quarters qualify to use an LMP. The area qualified for and used EPA's LMP option for the first 10-year maintenance plan (64 FR 11775, March 10, 1999), but the State was not able to use the LMP option for the plan revision that it submitted in 2003.[4] For the revised Greeley Maintenance Plan the State again used the LMP option to demonstrate continued maintenance of the CO NAAQS in the Greeley area. We have determined that the Greeley area qualifies for the LMP option for this plan revision because the maximum design value for the most recent eight consecutive quarters with certified data at the time the State adopted the plan (years 2007 and 2008) was 2.4 ppm.[5]

III. What was the State's Process?

Section 110(a)(2) of the CAA requires that a state provide reasonable notice and public hearing before adopting a SIP revision and submitting it to us.

The Colorado AQCC held a public hearing for the revised Greeley Maintenance Plan on December 17, 2009. The AQCC adopted the revised maintenance plan directly after the hearing. The Governor's designee

[1] In this case, the initial maintenance period extended through 2009. Thus, the second 10-year period extends through 2019.

[2] The Greeley area has never exceeded the 1-hour CO standard of 35 ppm.

[3] Memorandum ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph W. Paisie, Group Leader, EPA Integrated Policy and Strategies Group, to Air Branch Chiefs, October 6, 1995 (hereafter referred to as ''LMP Guidance'').

[4] For a more detailed explanation, see 70 FR 28234 (May 17, 2005).

[5] See Table 1 below. Additionally, according to the LMP guidance, an area using the LMP option must continue to have a design value ''at or below 7.65 ppm until the time of final EPA action on the redesignation.'' Table 1, below, demonstrates that the area meets this requirement.

submitted the revised plan to EPA on March 31, 2010.

We have evaluated the SIP revision and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. On September 30, 2010, by operation of law under CAA section 110(k)(1)(B), the SIP revision was deemed to have met the minimum ''completeness'' criteria found in 40 CFR part 51, appendix V.

IV. EPA's Evaluation of the Revised Greeley Maintenance Plan

The following are the key elements of an LMP for CO: Emission Inventory, Maintenance Demonstration, Monitoring Network/Verification of Continued Attainment, Contingency Plan, and Conformity Determinations. Below, we describe our evaluation of each of these elements as it pertains to the revised Greeley Maintenance Plan.

A. Emission Inventory

The revised Greeley Maintenance Plan contains an emission inventory for the base year 2007. The emission inventory is a list, by source category, of the air contaminants directly emitted into the Greeley CO maintenance area on a typical winter day in 2007.[6] The data in the emission inventory were developed using EPA-approved emissions modeling methods. The State provided a more detailed description of the 2007 inventory in its Technical Support Document (TSD) for the revised Greeley Maintenance Plan.[7] Included in this inventory are commercial cooking, fuel combustion, highway vehicle exhaust, oil and gas sources, non-road mobile sources, railroads, structure fires, woodburning, and non-oil-and-gas point sources. The revised maintenance plan and TSD contain detailed emission inventory information that was prepared in accordance with EPA guidance and is acceptable to us.[8]

B. Maintenance Demonstration

EPA considers the maintenance demonstration requirement to be satisfied for areas that qualify for and are using the LMP option. As mentioned above, a maintenance area is qualified to use the LMP option if that area's maximum 8-hour CO design value for eight consecutive quarters does not exceed 7.65 ppm (85% of the CO NAAQS). EPA maintains that if an area begins the maintenance period with a design value no greater than 7.65 ppm, the applicability of prevention of significant deterioration requirements, the control measures already in the SIP, and federal measures should provide adequate assurance of maintenance over the 10-year maintenance period. Therefore, EPA does not require areas using the LMP option to project emissions over the maintenance period. Because CO design values in the Greeley area are consistently well below the LMP threshold (See Table 1 below), the State has adequately demonstrated that the Greeley area will maintain the CO NAAQS into the future.

TABLE 1—8-HOUR CO DESIGN VALUES FOR GREELEY, COLORADO

Design value (ppm) *	Year
3.7	2004
2.8	2005
3.3	2006
2.4	2007
2.2	2008
2.1	2009
2.3	2010
1.5	2011
1.6	2012

* Design Values were derived from the EPA AirData Web site (*http://www.epa.gov/airdata/*).

C. Monitoring Network/Verification of Continued Attainment

In the revised Greeley Maintenance Plan, the State commits to continuing operation of an air quality monitoring network in accordance with 40 CFR Part 58 to verify continued attainment of the CO NAAQS. The State also commits to conducting an annual review of the air quality surveillance system in accordance with 40 CFR 58.10. Additionally, the plan indicates that if measured mobile source parameters change significantly over time, the State will perform appropriate studies to determine whether additional and/or re-sited monitors are necessary. We are approving these commitments as satisfying the relevant requirements.

D. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of an area. To meet this requirement, the State has indentified appropriate contingency measures along with a schedule for the development and implementation of such measures.

As stated in the revised Greeley Maintenance Plan, the contingency measures will be triggered by a violation of the CO NAAQS. No more than 60 days after notification from the Colorado Air Pollution Control Division (APCD) that a violation of the CO NAAQS has occurred, the North Front Range Metropolitan Planning Organization (NFRMPO), in conjunction with the APCD, AQCC, and local governments, will initiate a subcommittee process to begin evaluating potential contingency measures. The subcommittee will present recommendations within 120 days of notification, and the recommended contingency measures will be presented to the AQCC within 180 days of notification. The AQCC will then hold a public hearing to consider the contingency measures recommended by the subcommittee along with any other contingency measures the AQCC believes may be appropriate to effectively address the violation. The necessary contingency measures will be adopted and implemented within one year after a violation occurs.

The potential contingency measures that are identified in the revised Greeley CO maintenance plan include, but are not limited to: (1) A federally enforceable enhanced vehicle inspection and maintenance program; [9] (2) a 2.7% oxygenated gasoline program, as set forth in AQCC Regulation Number 13 as of September 2009; (3) re-establishing nonattainment new source review permitting for stationary sources; and (4) wood burning restrictions.

We find that the contingency measures provided in the revised Greeley Maintenance Plan are sufficient and meet the requirements of section 175A(d) of the CAA.

E. Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA 176(c)(1)(B)). EPA's conformity rule at 40 CFR part 93 requires that transportation plans, programs and projects conform to SIPs and establish the criteria and procedures for determining whether or not they conform. To effectuate its purpose, the conformity rule requires a demonstration that emissions from the Regional Transportation Plan (RTP) and

[6] Violations of the CO NAAQS are most likely to occur on winter weekdays.

[7] The TSD for the revised Greeley Maintenance Plan can be found in the docket for this action.

[8] See ''Procedures for Processing Requests To Redesignate Areas To Attainment,'' from John Calcagni, Director, Air Quality Management Division, EPA, September 4, 1992.

[9] A State-only enhanced inspection and maintenance program is already required for the Greeley area as part of the State's ''Ozone Action Plan.'' However, this existing program is not federally enforceable, and could be discontinued by the State without regard to the Greeley CO maintenance plan.

the Transportation Improvement Program (TIP) are consistent with the motor vehicle emission budget (MVEB) contained in the control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). A MVEB is defined as the level of mobile source emissions of a pollutant relied upon in the attainment or maintenance demonstration to attain or maintain compliance with the NAAQS in the nonattainment or maintenance area.[10]

Under the LMP guidance, emissions budgets generally are treated as not constraining for the length of the maintenance period. While EPA's LMP guidance does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting a MVEB. According to the LMP guidance, it is unreasonable to expect that an LMP area will experience so much growth in that period that a violation of the CO NAAQS would result.[11] However, the CO maintenance plan for Greeley that we approved in 2005 (70 FR 48650) contains MVEBs for 2010 through 2014 (62 tons per day of CO), and for 2015 (60 tons per day of CO), and the State did not revise or remove these MVEBs from the SIP. Under our conformity regulations, consistency with those MVEBs must continue to be demonstrated as long as such years are within the timeframe of the transportation plan. See 40 CFR 93.118(b)(2)(i) and (d)(2).[12]

When those years are no longer within the timeframe of the transportation plan, there will no longer be a need to demonstrate conformity with any MVEB for the Greeley CO maintenance area, for the reasons described in our LMP guidance. From that point forward, all actions that require conformity determinations for the Greeley CO maintenance area under our conformity rule provisions will be considered to have already satisfied the regional emissions analysis and ''budget test'' requirements in 40 CFR 93.118 because of our approval of the Greeley CO LMP.

However, since LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs and projects. Specifically, for such determinations, RTPs, TIPs and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108) and meet the criteria for consultation and Transportation Control Measure (TCM) implementation in the conformity rule provisions (40 CFR 93.112 and 40 CFR 93.113, respectively). In addition, projects in LMP areas still will be required to meet the applicable criteria for CO hot spot analyses to satisfy ''project level'' conformity determinations (40 CFR 93.116 and 40 CFR 93.123), which must also incorporate the latest planning assumptions and models available (40 CFR 93.110 and 40 CFR 93.111, respectively).

Our approval of the revised Greeley Maintenance Plan affects future CO RTP and TIP conformity determinations prepared by NFRMPO, the Colorado Department of Transportation, the Federal Highway Administration and the Federal Transit Administration.

V. Final Action

We are approving the revised Greeley Maintenance Plan submitted on March 31, 2010. This maintenance plan meets the applicable CAA requirements, and we have determined it is sufficient to provide for maintenance of the CO NAAQS over the course of the second 10-year maintenance period out to 2019.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the Proposed Rules section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective October 1, 2013 without further notice unless we receive adverse comments by September 3, 2013. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

[10] Further information concerning EPA's interpretations regarding MVEBs can be found in the preamble to EPA's November 24, 1993, transportation conformity rule (see 58 FR 62193–62196).

[11] LMP Guidance at 4. October 6, 1995.

[12] As required by our transportation conformity adequacy process, we made a finding in a March 4, 2011 letter to the Colorado Department of Public Health and Environment (CDPHE) that the revised Greeley Maintenance Plan was adequate for transportation conformity purposes. This finding was based substantially on the fact that the Greeley CO maintenance area meets the LMP criteria, and is therefore not required to project future emissions. In a **Federal Register** notice dated August 2, 2011, we notified the public of our finding that the revised Greeley Maintenance Plan was adequate for transportation conformity purposes (see 76 FR 46288). This adequacy determination became effective on August 17, 2011.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 1, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See Clean Air Act section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 16, 2013.

Judith Wong,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart G—Colorado

■ 2. Section 52.349 is amended by adding paragraph (p) to read as follows:

§ 52.349 Control strategy: Carbon monoxide

* * * * *

(p) Revisions to the Colorado State Implementation Plan, revised Carbon Monoxide Maintenance Plan for Greeley, as adopted by the Colorado Air Quality Control Commission on December 17, 2009 and submitted by the Governor's designee on March 31, 2010.

[FR Doc. 2013–18439 Filed 8–1–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120907427–3652–02]

RIN 0648–BC51

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Reef Fish Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule revises the vermilion snapper recreational bag limit, revises the yellowtail snapper stock annual catch limit (ACL), and removes the requirement for reef fish vessels to have onboard and use a venting tool when releasing reef fish. The purpose of this rule is to help achieve optimum yield (OY) and prevent overfishing of vermilion and yellowtail snapper, reduce the unnecessary burden to fishers associated with venting reef fish, and minimize bycatch and bycatch mortality.

DATES: This rule is effective September 3, 2013.

ADDRESSES: Electronic copies of the framework action, which includes an environmental assessment, regulatory impact review, and Regulatory Flexibility Act analysis, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm.*

FOR FURTHER INFORMATION CONTACT: Peter Hood, Southeast Regional Office, NMFS, telephone 727–824–5305; email: *Peter.Hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On May 7, 2013, NMFS published a proposed rule for the framework action and requested public comment (78 FR 26607). The proposed rule and the framework action outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Management Measures Contained in This Final Rule

Through this final rule, NMFS establishes a 10-vermilion snapper recreational bag limit within the 20-fish aggregate reef fish bag limit, increases the Gulf yellowtail snapper ACL from 725,000 lb (328,855 kg), round weight, to 901,125 lb (408,743 kg), round weight, and removes the requirement to have onboard and use venting tools when releasing reef fish. All weights discussed in this final rule are in round weight.

Vermilion Snapper Recreational Bag Limit

Vermilion snapper is currently included within the Gulf reef fish aggregate recreational bag limit of 20 fish. The Council's Reef Fish Advisory Panel (RFAP) recommended that the Council take action to constrain the recreational harvest of vermilion snapper because of significant recent increases in recreational landings. In 2011, recreational landings were approximately 1.15 million lb (521,631 kg), compared to 457,000 lb (207,292 kg) in 2010. The Council decided that the vermilion snapper bag limit should be restricted to 10 fish within the overall 20-fish aggregate reef fish bag limit to help constrain vermilion snapper recreational harvest and to minimize the opportunity for the vermilion snapper stock ACL to be exceeded by slowing the rate of potential future increases in the recreational harvest.

Yellowtail Snapper ACL

In the Gulf, the yellowtail snapper ACL is managed with a single stock ACL. Additionally, because yellowtail snapper in the U.S. comprise a single stock, landings from both the South Atlantic and Gulf regions are combined for stock assessment purposes. The resulting acceptable biological catch (ABC) is allocated among both regions with 75 percent of the ABC assigned to South Atlantic jurisdiction and 25 percent of the ABC assigned to Gulf jurisdiction. Currently, the stock ABC is 2.9 million lb (1.3 million kg), with 725,000 lb (328,855 kg) allocated to the Gulf. This Gulf ABC value is used to determine the Gulf yellowtail snapper stock ACL, where the ACL is equal to the ABC, which was established through the Gulf's Generic ACL/Accountability Measures (AM) Amendment (76 FR 82044, December 29, 2011).

In 2012, the Florida Fish and Wildlife Research Institute (FWRI) conducted a benchmark stock assessment of yellowtail snapper. The assessment indicated that the yellowtail snapper stock was not overfished or undergoing overfishing. As a result of that stock status and the fact that the yellowtail snapper biomass is greater than what is needed to support harvesting at the maximum sustainable yield, the South Atlantic and Gulf Council's Scientific and Statistical Committees (SSCs) agreed to set the overall stock ABC at 4.05 million lb (1.94 million kg). Using the 25 percent Gulf allocation of the overall stock ABC, the ABC for Gulf yellowtail snapper was determined to be 1.012 million lb (0.459 million kg).

For setting the Gulf yellowtail snapper ACL, the Council applied its ACL control rule to the ABC to account for management uncertainty. Following the control rule, the ACL was reduced by 11 percent from the Gulf allocation of the ABC. This results in a Gulf yellowtail snapper ACL of 901,125 lb (408,743 kg).

Venting Tools

A venting tool is a device intended to deflate the abdominal cavity of a fish to release the fish with minimal damage. Currently, Gulf reef fishermen must possess venting tools onboard and use them when releasing reef fish. This requirement was implemented through Amendment 27 to the FMP (73 FR 5117, January 29, 2008). The venting tool requirement was implemented to reduce bycatch and discard mortality in the reef fish fishery. However, several recent scientific studies have questioned the usefulness of venting tools in preventing discard mortality in fish, particularly those caught in deep waters. In addition, some fish caught in shallow waters may not need to be vented, and attempts at venting may damage fish by improper venting techniques and increased handling time while the fish are out of the water. Finally, the current requirement to use a venting tool may prevent fishermen from using other devices such as fish descenders, which are devices that take the fish back to depth without puncturing them. Because of these factors, the Council voted to remove the venting tool requirement for the Gulf reef fishery. This provides fishermen with more discretion when they release reef fish, but does not prohibit the use of venting tools or other release devices by fishers.

Additional Management Measure Contained in the Framework Action

Vermilion snapper in the Gulf is managed with a single stock ACL. The current ACL for the Gulf vermilion snapper stock is 3.42 million lb (1.55 million kg), and was set through the Gulf's Generic ACL/AM Amendment (76 FR 82044, December 29, 2011). This ACL was established based on 1999–2008 landings data and was adjusted to account for scientific and management uncertainty per the Council's ABC and ACL control rules developed in the Generic ACL/AM Amendment.

In 2011, a vermilion snapper update stock assessment was performed through the Southeast Data, Assessment, and Review (SEDAR) process (SEDAR 9 Update) and used data through 2010. The assessment indicated that the stock was not overfished nor undergoing overfishing. Based on the SEDAR 9 Update, the Council's SSC recommended that the vermilion snapper stock ABC be set at 4.41 million lb (2.00 million kg) in 2013, 4.34 million lb (1.97 million kg) in 2014, and 4.33 million lb (1.96 million kg) in 2015, 2016, and subsequent years.

The Council reviewed several alternatives for setting the Gulf vermilion snapper stock ACL that ranged from maintaining it at the current 3.42 million lb (1.55 million kg) to setting it equal to the ABC. Recommendations by the Council's RFAP and public testimony from vermilion snapper fishermen to the Council indicated that the stock condition appeared to be declining in recent years. Given this information, and considering that the last year of data used in the update assessment was 2010, the Council recommended, as a precaution, not to increase the vermilion snapper stock ACL at this time. Therefore the vermilion snapper stock ACL will remain at 3.42 million lb (1.55 million kg).

Comments and Responses

NMFS received a total of 18 comment submissions on the framework action and the proposed rule. Of these comment submissions, 11 were generally opposed to the rule, 4 were generally in favor of the rule, 2 were in favor of some aspects of the rule and against other aspects, and one was from a Federal agency that had no objection to the framework action or the proposed rule. The comments specific to this framework action or proposed rule can be generally categorized as either for or against the bag limit, and for or against eliminating the venting tool requirement. NMFS agrees with those comments supporting the bag limit and eliminating the venting tool requirement. NMFS responds to the remaining comments as follows.

Comment 1: A 10-fish vermilion snapper recreational bag limit within the 20-fish reef fish aggregate bag limit is too restrictive and unnecessary.

Response: NMFS disagrees. This final rule implements a 10-fish vermilion snapper bag limit as a precautionary measure due to concern about the status of the vermilion snapper stock. Members of the Council's RFAP who target vermilion snapper expressed concern that the stock appears to be declining in recent years and that stock status does not match the projections in the SEDAR 9 Update assessment. Therefore, the RFAP recommended setting the ACL below the ABC level recommended by the Council's SSC. In addition, the Council received similar comments through public testimony.

The Council did not increase the vermilion snapper ACL in response to those comments. The RFAP also recommended that the Council constrain vermilion snapper recreational harvest because of recent increases in landings, which increased from approximately 457,000 lb (207,292 kg) in 2010 to 1.15 million lb (521,631 kg) in 2011. The RFAP was concerned that if such increases persist, the ACL could be exceeded. They recommended the Council set a recreational bag limit of 10 vermilion snapper within the 20-fish reef fish aggregate bag limit, which is expected to constrain recreational harvest, and should reduce the likelihood of the vermilion snapper ACL being exceeded. Given concern about the stock status and the recent increases in recreational landings, the Council took a precautionary approach and revised the vermilion snapper bag limit.

Comment 2: Retain the venting tool requirement or require that some type of gear that reduces barotrauma, such as a fish descender, be onboard a vessel when reef fish fishing.

Response: NMFS recognizes that the use of a venting tool can reduce the discard mortality rate of reef fish brought to the surface when used correctly for certain types of fish. However, requiring the use of venting tools can contribute to discard mortality when used incorrectly or with other types of fish, particularly those harvested from deeper waters. Recent research has determined that use of venting tools is of questionable usefulness. Depending on the species of fish to be vented, the size of the fish to be vented, and the circumstances surrounding the release of the fish, alternative methods of returning the fish to depth (*e.g.,* rapid descent devices, recompression devices, etc.), or simply releasing the fish with no venting may be preferable. The venting tool requirement may also discourage fishermen from using other methods to return fish to deeper waters that might improve the chance of a reef fish species surviving catch and release, such as the use of a recompression device.

Additionally, requiring some type of gear that reduces reef fish barotrauma poses management and enforcement problems. Removing the venting tool requirement will simplify Federal regulations and provide fishermen the flexibility to use other release devices that may be more effective than venting certain types of fish. This final rule does not preclude fishermen from using venting tools in the future, but simply removes the requirement to have them onboard and use them.

Changes From the Proposed Rule

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from $4.0 to $19.0 million, Shellfish Fishing from $4.0 to $5.0 million, and Other Marine Fishing from $4.0 to $7.0 million. Pursuant to the Regulatory Flexibility Act, and prior to SBA's June 20, 2013, final rule, a certification was developed for this action using SBA's former size standards. Subsequent to the June 20, 2013 rule, NMFS has reviewed the certification prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS has determined that the new size standards do not affect the analyses prepared for this action.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule and the framework action are necessary for the conservation and management of the Gulf reef fish fishery and are consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf, Reef fish, Venting tool, Vermilion snapper, Yellowtail snapper.

Dated: July 29, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.30, paragraph (c) is removed and the introductory text is revised to read as follows:

§ 622.30 Required fishing gear.

For a person on board a vessel to fish for Gulf reef fish in the Gulf EEZ, the vessel must possess on board and such person must use the gear as specified in paragraphs (a) and (b) of this section.

* * * * *

■ 3. In § 622.38, paragraph (b)(5) is revised to read as follows:

§ 622.38 Bag and possession limits.

* * * * *

(b) * * *

(5) *Gulf reef fish, combined, excluding those specified in paragraphs (b)(1) through (b)(4) and paragraphs (b)(6) through (b)(7) of this section*—20. In addition, within the 20-fish aggregate reef fish bag limit, no more than 2 fish may be gray triggerfish and no more than 10 fish may be vermilion snapper.

* * * * *

■ 4. In § 622.41, the second sentence of paragraph (n) is revised to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(n) * * * The stock ACL for yellowtail snapper is 901,125 lb (408,743 kg), round weight.

* * * * *

[FR Doc. 2013–18674 Filed 8–1–13; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 149
Friday, August 2, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Doc. No. AMS–FV–12–0008; FV12–920–1 PR]

Kiwifruit Grown in California; Proposed Amendments to Marketing Order 920 and Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This rule proposes five amendments to Marketing Order No. 920 (order), which regulates the handling of kiwifruit grown in California, and provides growers with the opportunity to vote in a referendum to determine if they favor the changes. The amendments are based on proposals by the Kiwifruit Administrative Committee (Committee or KAC), which is responsible for the local administration of the order. The five amendments would provide authority to recommend and conduct production and postharvest research, to recommend and conduct market research and development projects, to receive and expend voluntary contributions, to specify that recommendations for production research and market development be approved by eight members of the Committee, and to update provisions regarding alternate members' service on the Committee. These amendments are intended to improve administration of and compliance with the order, as well as reflect current industry practices.

DATES: The referendum will be conducted from August 26, 2013, through September 6, 2013. The representative period for the purpose of the referendum is August 1, 2012, through July 31, 2013.

FOR FURTHER INFORMATION CONTACT: Kathleen Bright, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 205–2830, Fax: (202) 720–8938, or Email: *Kathleen.Bright@ams.usda.gov* or Michelle Sharrow, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–9921, Fax: (202) 720–8938 or Email: *Michelle.Sharrow@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit produced in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' Section 608c(17) of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorize amendments of the order through this informal rulemaking action.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any research and market development provisions of any State program covering California kiwifruit.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246) amended section 18c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR Part 900 (73 FR 49307; August, 21, 2008). The amendment of section 18c(17) of the Act and additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendment proposals are not unduly complex and the nature of the proposed amendments is appropriate for utilizing the informal rulemaking process to amend the order. A discussion of the potential regulatory and economic impacts on affected entities is discussed later in the ''Final Regulatory Flexibility Analysis'' section of this rule.

The proposed amendments were unanimously recommended by the Committee following deliberations at public meetings on July 12 and December 13, 2011. A proposed rule soliciting comments on the proposed amendments was issued on February 4, 2013, and published in the **Federal Register** on February 8, 2013 (78 FR 9331). Three comments were received. Two comments were supportive of the proposed amendments. The third comment was supportive of some of the proposed amendments and not supportive of others. These comments will be addressed later in this document. AMS will conduct a producer referendum to determine

support for the proposed amendments. If appropriate, a final rule will then be issued to effectuate the amendments favored by producers in the referendum.

The Committee's proposed amendments would amend the marketing order by: (1) Adding authority to recommend and conduct production and postharvest research, (2) adding authority to recommend and conduct market research and development projects, (3) adding authority to receive and expend voluntary contributions, (4) amending procedures to specify that recommendations for production research and market development be approved by eight members of the Committee, and (5) clarifying provisions regarding alternate members' service on the Committee.

In addition to these proposed amendments, AMS proposes to make any additional changes to the order as may be necessary to conform to any amendment that may result from this rulemaking action.

Proposal Number 1—Production and Postharvest Research

This proposal would add section 920.47 to authorize production and postharvest research to assist or improve the efficient production and postharvest handling of kiwifruit. Adding this authority would provide the Committee with the ability to conduct production research, food quality and handling research, and to distribute that information. These functions were previously conducted by the California Kiwifruit Commission (CKC), a State of California program, which ceased to exist on September 30, 2011.

Kiwifruit is a relatively new crop to California with the first commercial crop produced in 1971. The CKC was established in 1979, five years prior to the kiwifruit marketing order. The CKC performed marketing research and development programs for the industry. When the kiwifruit marketing order was established in 1984, its main purpose was to implement quality and pack and container regulations. The two programs worked independently, and the industry chose not to add authority for production and postharvest research to the Federal order at inception to avoid duplication. According to the Committee, industry leaders believed at that time that having programs that performed separate and distinct functions would best serve the interests of the kiwifruit industry.

Over the past two decades, California kiwifruit acreage and the number of growers have decreased, from a peak in 1992 of 7,300 producing acres and 690 producers to 4,200 producing acres and 175 growers today, according to data from the National Agricultural Statistics Service and the Committee. As a result, the industry has reduced programs supported by industry assessments. In the early 2000s, industry leaders began to evaluate industry programs in an effort to determine which ones were the most beneficial and actively sought ways to make the administration of these programs more cost efficient and effective. The need for production and postharvest research is repeatedly identified as one of the most important programs to the industry, along with market development programs. According to the Committee, there is a general consensus throughout the industry that the future administration of these activities should be done through one program, and because there is widespread support to maintain the quality and pack and container requirements, that program should be the Federal marketing order.

The Committee believes that for the California kiwifruit industry to remain productive and competitive, management practices must continue to evolve. It further believes that production and postharvest research was one of the most beneficial activities performed by the CKC. Over the years, these activities helped growers become knowledgeable on how to establish vineyards, prune, thin, irrigate, pollinate, fertilize, manage diseases, harvest, store and transport kiwifruit. According to the Committee, the industry wants the KAC to conduct these activities since the CKC no longer exists.

The Committee believes production and postharvest research would have a direct and positive impact on producers, handlers, and consumers. Diseases such as the infectious vine-killing bacterial disease known as PSA, confirmed in New Zealand in 2010, decimated 28% of New Zealand's orchards. With no current organization equipped to facilitate research activities, the same could happen to California kiwifruit. Production research projects sponsored by the Committee could help develop cultural practices to reduce the likelihood of a similar incident in the United States. In addition, improving food quality and handling practices is important to producers, handlers, and consumers. The industry desires to take a proactive stance to be prepared to address any challenges in this area.

Also, without a research organization, the Committee is unable to participate in the joint global research effort with the International Kiwifruit Organization (IKO). The IKO jointly funds research activities with other organizations that benefit kiwifruit producers and consumers on a global basis. Approval of this proposal would ensure the industry's ability to participate in these activities.

Adding production research to the order is expected to improve returns for producers because it will enable the industry to develop new technologies to increase yields, improve fruit quality and production, and facilitate postharvest research.

There is a potential cost to handlers of increased assessments to fund projects. However, the KAC would weigh the costs against the potential benefits. The USDA would review and approve activities prior to their undertaking. In addition, the KAC would evaluate activities after they are completed to ensure that the goals and objectives are met.

For the reasons stated above, it is proposed that section 920.47 be added to authorize production and postharvest research to assist or improve the efficient production and postharvest handling of kiwifruit.

Proposal Number 2—Market Research and Development

This proposal would add section 920.48 to authorize marketing research and development programs to promote, assist, or improve the marketing, distribution, and consumption of kiwifruit. Adding this authority would enable the industry to continue to conduct these activities that were previously conducted by the CKC.

The California kiwifruit industry, as a whole, has undergone many changes since the inception of the marketing order in 1984. The industry experienced significant growth in the 1980s, but acreage and production levels have since declined. According to the Committee, this has caused industry leaders to evaluate which programs are most beneficial to the industry and the most efficient way to conduct such programs. Through an industry vote, the CKC was discontinued in 2011, as previously discussed. The Committee believes that marketing research and development activities previously conducted by the CKC are beneficial to the industry, but can be conducted under the Federal marketing order. This also creates overall efficiencies by using a single industry organization to carry out the various functions previously conducted by two organizations. Therefore, the Committee supports adding marketing research and development authority to the order.

Providing authority for the Committee to conduct marketing research and

development programs would assist the industry with the marketing, distribution, and consumption of kiwifruit. The Committee could undertake marketing research and development activities such as conducting market and consumer surveys, which could identify consumer and market preferences. Further, adding this authority to the marketing order would enable the Committee to apply for Market Access Program (MAP) funding from the USDA and engage in jointly funded export marketing research and development activities. Participation in jointly funded programs including MAP was identified as a priority by the Committee in its strategic planning in the early 2000s. These types of activities would be designed to increase the demand and sales of California kiwifruit, with the intent of increasing returns to producers.

There is a potential cost to handlers of increased assessments to fund projects. However, the KAC would weigh the costs against the potential benefits. The USDA would review and approve activities prior to their undertaking. The KAC would evaluate activities after they are completed to ensure that the goals and objectives are met. In addition, the Federal Agricultural Improvement and Reform Act of 1996 (1996 Farm Bill) (Pub. L. 104–127) requires Federal marketing order promotion activities to be evaluated by an independent party on a regular basis to ensure they are effective. Any such programs conducted under the order would be evaluated to help ensure that the benefits exceed the costs.

For the reasons stated above, it is proposed that section 920.48 be added to authorize marketing research and development programs to promote, assist, or improve the marketing, distribution and consumption of kiwifruit.

Proposal Number 3—Voluntary Contributions

This proposal would add section 920.45 to authorize the Committee to receive and expend voluntary contributions for market development projects, market research, and production and postharvest research. The proposal also contains a provision that any voluntary contributions would be free from any encumbrances by the donor and the Committee would retain complete control of their use. Currently, the Committee only has authority to collect and spend assessment dollars. In the event that proposal number one and/or proposal number two are adopted, for example, the ability to accept voluntary contributions would provide the Committee with additional funding sources for production and postharvest research, and marketing research and development activities.

This proposal compliments and supports proposals number one and two. If adopted, this proposal could help provide financial support for marketing research and development activities. Producers and handlers could benefit from these activities as discussed under proposals number one and two. Also, funding from an additional source could help to mitigate potential assessment rate increases to fund research and development projects.

The Committee would clearly communicate that voluntary contributions accepted would be free from any encumbrances by the donor and the Committee would retain control over the use of the funds.

For the reasons stated above, it is proposed that section 920.45 be added to authorize the Committee to receive and expend voluntary contributions for market development projects, market research, and production and postharvest research.

Proposal Number 4—Committee Quorum (Voting)

This proposal would modify section 920.32 so that approval by eight members of the Committee is required for market research and development as well as production and postharvest research activities. The proposed change to require an eight-vote majority for marketing research and development issues is consistent with industry practices and voting requirements for Committee actions on other issues. The Committee is comprised of twelve members and alternates. This proposal would help to ensure industry support exists before undertaking these activities.

Section 920.32 of the order provides that actions of the Committee require a majority vote, except that eight concurring votes are required by the Committee with respect to actions concerning expenses, assessments, or recommendations for regulations. The addition of approval by eight members for marketing research and development activities would be consistent with current Committee procedures regarding issues of major importance to the industry. Requiring eight concurring votes would ensure that major actions of the Committee would have a super majority, indicating that a broad level of industry support exists prior to undertaking marketing research and development activities.

For the reasons stated above, it is proposed that section 920.32 be modified so that approval by eight members of the Committee is required for market research and development as well as production and postharvest research activities.

Proposal Number 5—Alternate Member Procedures

This proposal would modify section 920.27 to update and clarify procedures for substitute alternates from within the same district to represent absent members at Committee meetings in districts with more than two members. Further, this proposal would clarify existing language in the order by providing the authority for substitute alternates within the same district to represent absent members. This is a necessary change designed to update existing language.

Prior to 2010, the production area covered by the order was comprised of eight districts, represented by one or two members, and an alternate member for each district, for a total of twenty-two grower positions. In 2010, the order was amended and the number of districts decreased to three. Each district is now represented on the Committee by two, four, or five members and alternate members, for a total of twenty-two grower positions. However, section 920.27 only addresses alternate members' service on the Committee in districts with one and two grower positions. This proposal addresses alternate members' service on the Committee in districts with more than two members, as well as alternates if both a member and his or her respective alternate are unable to attend a Committee meeting. In such situations, the Committee would be authorized to designate any other alternate present, from the same district, to serve in place of the absent member.

Updating the order to clarify procedures for substitute alternates' service on the Committee would help to ensure that quorum requirements are met. It would also contribute to more efficient conduct of Committee business.

For the reasons stated above, it is proposed that section 920.27 be modified to update and clarify procedures for substitute alternates from within the same district to represent absent members at Committee meetings in districts with more than two members.

Final Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural

Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Based on committee data, there are approximately 175 producers and 27 handlers of kiwifruit in the California production area. The Small Business Administration (SBA) defines small agricultural producers as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $7,000,000. (13 CFR 121.201).

The California Agricultural Statistical Service (CASS) reported total California kiwifruit production for the 2011–12 season at 37,700 tons, with an average price of $775 per ton. Based on the average price, shipment, and grower information provided by the CASS and the Committee, the majority of kiwifruit handlers would be considered small businesses under the SBA definition. In addition, based on kiwifruit production and price information, as well as the total number of California kiwifruit growers, the average annual grower revenue is less than $750,000. Thus, the majority of California kiwifruit producers may also be classified as small entities.

The amendments proposed by the Committee would provide authority to recommend and conduct production and postharvest research; add authority to recommend and conduct marketing research and development projects; add authority to receive and expend voluntary contributions; amend procedures to specify that recommendations for production research and market development be approved by eight members of the Committee; and update provisions regarding alternate members' service on the Committee.

These proposed amendments were unanimously recommended at public meetings of the Committee held on July 12 and December 13, 2011.

If proposal number one regarding adding research authority to the order is approved in referendum, there would be no immediate cost to growers or handlers. This proposal would only provide authority to recommend production and postharvest research activities. In the event the Committee decided to undertake these activities in the future, there would be a cost associated with funding any projects recommended. However, research activities were previously funded by the industry through the CKC, which no longer exists. Therefore, there would be no net overall increase in costs to the industry if the Committee chose to take over projects previously funded through the CKC.

Section 920.41(b) of the order establishes a maximum limit on the assessment rate that may be implemented. The limit was established at $.035 per tray equivalent (6.8 pounds) when the order was promulgated in 1984, and may be adjusted for inflation. The assessment rate currently in effect is $.035 per 19.8-pound (9 kilo) container, or approximately $.012 per tray equivalent (§ 920.213). The current rate is well below the maximum authorized under the order and any potential increase in the assessment rate to cover the costs of research activities is anticipated to be well within the maximum assessment rate authorized under the order. Therefore, the Committee did not recommend an increase in the assessment rate limitation. In addition, if proposal number three, regarding authority for the Committee to accept voluntary contributions is approved, it could provide additional sources of revenue and reduce the amount of assessment monies otherwise needed to fund research activities.

Although there would be a cost associated with any research activities undertaken by the industry, the benefits of such activities would be expected to outweigh the costs. Past benefits of production research to the California kiwifruit industry include improved techniques for establishing vineyards, pruning, thinning, irrigating, pollination, fertilizer application, disease and pest management, and harvesting. Benefits of postharvest research include improved methods of fruit storage, packaging, and transportation. These research results have been disseminated to growers and handlers in the past and have been instrumental in maintaining a viable kiwifruit industry in California. The Committee believes a continuation of these types of activities is important to the long term success of the industry.

Prior to undertaking any research activities, the Committee would evaluate potential projects and weigh their costs against the potential benefits to the industry. Any projects recommended by the Committee would be reviewed and approved by USDA before being implemented. The Committee and USDA would provide oversight to help ensure that the goals and objectives were being met. The results would be disseminated to industry members and would also be available to the public.

If proposal number two regarding adding authority to the order for marketing research and development projects is approved, there would be no immediate costs to the industry, as with proposal number one. This proposal would similarly only provide authority to recommend production and postharvest research activities. In the event the Committee decided to undertake these activities in the future, there would be a cost associated with funding any marketing research and development projects recommended.

Like the production and postharvest research activities discussed above, marketing research and development projects could also receive supplemental funding through receipt of voluntary contributions if proposal number three is approved. This could help to mitigate any possible assessment rate increases to pay for the costs of these activities. To the extent that the assessment rate may need to be increased, any increase would be limited so it remains within the maximum level authorized under section 920.41 of the order.

Any increased costs associated with marketing research and development activities are expected to be outweighed by the benefits. Marketing research could be conducted regarding consumer tastes and preferences. This type of information is valuable in developing marketing strategies. Collection of market data can also be useful to determine the success of prior programs and to develop future programs. Market development programs could be used to conduct programs designed to increase awareness and demand for California kiwifruit. These demand building activities would be expected to increase sales with the intent of ultimately increasing returns to producers.

Prior to undertaking any marketing research and/or market development activities, the Committee would evaluate potential projects and their costs against the potential benefits to the industry. Any projects recommended by the Committee would be reviewed and approved by USDA before implementation. The Committee would provide oversight to ensure that the goals and objectives were being met. In addition, as required by the Federal Agricultural Improvement and Reform

Act of 1996, any marketing research and development programs engaged in under a Federal marketing order require periodic evaluation by an independent third party to ensure that they are effective. Thus, any such programs conducted under the kiwifruit order would be evaluated to help ensure that the benefits exceed the costs.

Proposal number three would provide authority for the Committee to receive voluntary contributions to help fund marketing research and development activities. If approved and utilized, this could provide an additional source of revenue to help supplement the funding of research and development programs. These types of programs are intended to benefit the entire industry. This proposal would not increase or decrease any reporting, recordkeeping, or compliance costs. Acceptance of voluntary financial contributions by the Committee would not result in increased costs. Rather, it might reduce the amount of assessment revenue needed to fund a given program or programs.

Proposal numbers four and five relate to voting procedures and alternate member service on the Committee. Both are procedural in nature and would have no economic impact on producers or handlers if they are approved because they would not establish any regulatory requirements on handlers, nor do they contain any assessment or funding implications. There would be no change in financial costs, reporting, or recordkeeping requirements if either of these proposals is approved.

Alternatives to these proposals, including making no changes at this time, were considered. However, the Committee believes that it would be beneficial to have the ability to conduct production research and market development activities, collect voluntary contributions, and clarify procedural language for Committee meetings.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, Generic OMB Fruit Crops. No changes in those requirements as a result of this proceeding are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The Committee's meetings, at which these proposals were discussed, were widely publicized throughout the California kiwifruit industry. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the meeting was public, and all entities, both large and small, were encouraged to express their views on these proposals.

A proposed rule concerning this action was published in the **Federal Register** on February 8, 2013 (78 FR 9331). Copies of the rule were mailed or sent via facsimile to all Committee members and kiwifruit handlers. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending April 9, 2013, was provided to allow interested persons to respond to the proposal.

Three comments were received. Two comments were supportive of the proposed amendments.

The third commenter supported the amendments to §§ 920.32 and 920.45 concerning Committee quorum (voting) and accepting voluntary contributions, respectively. However, the commenter was opposed to the proposed amendment to § 920.27 regarding alternate member procedures that would allow substitute alternates, from within the same district, to represent absent members at Committee meetings in districts with two or more members because he was concerned that it gave the Committee the opportunity to choose an alternate who shared their views. The proposed change would improve the likelihood that quorum requirements are met. This should ensure a timely and orderly flow of business so that important matters would not have to be postponed. The substitute alternate would only be called upon if the member and their designated alternate were both absent. Because the substitute would be from the same district as the absent member and alternate, it is more likely that the substitute would represent the views of other growers in that district.

In 2010, the order was amended and the number of districts decreased to three. Each district is now represented on the Committee by two, four, or five members and alternate members, for a total of twenty-two grower positions. However, section 920.27 only addresses alternate members' service on the Committee in districts with one and two grower positions. This proposal addresses alternate members' service on the Committee in districts with more than two members, as well as substitute alternates if both a member and his or her respective alternate are unable to attend a Committee meeting. In such situations, the Committee would be authorized to designate any other alternate present, in the same district, to serve in place of the absent member. Accordingly, no change to the proposed amendment is being adopted.

The commenter was also opposed to the proposed amendment to § 920.48 regarding marketing research and development because he believes each marketer should conduct their own market promotion. The Act authorizes the establishment of marketing research and development projects including paid advertising for certain commodities; however, paid advertising is not authorized for kiwifruit. (7 U.S.C. 608(c)(6)(I)) The Committee developed this amendment taking into account that the CKC is no longer conducting such activities. One purpose of such generic programs is to benefit all members of the kiwifruit industry, including those that could not fund their own programs. As such, adding authority in the order for market research and development projects would benefit the entire kiwifruit industry. Therefore, no change to the proposed amendment is being adopted.

The commenter only supported the amendment to add authority to § 920.47 to conduct production and postharvest research if the quorum requirement of eight votes passes in § 920.32. The commenter wanted to either eliminate or link the two proposed amendments. Such a change would not allow the voters to consider each proposal on its own merits. Currently, the order requires an eight vote plurality for any changes for expenses, assessments, or recommended regulations in § 920.32. The Committee unanimously supported requiring eight votes for approval of marketing research and development as well as production and postharvest research activities. Requiring at least eight votes would insure that a broad base of support existed for any major actions that would affect the budget. Further, the Committee believes this requirement will ensure that industry support exists before undertaking these activities. The commenter was

supportive of adding the quorum voting requirement for production and postharvest research and the commenter was in favor of production and postharvest research.

The purpose of not bundling the proposed amendments is to give the industry the opportunity to consider each proposal on its own merits. If the proposed addition of new § 920.47 and/or § 920.48 is approved by voters, the language in § 920.32 will be amended accordingly, if that amendment also receives the required approval. Likewise, if § 920.32 does not pass, § 920.47 and/or § 920.48 could still benefit the industry. Accordingly, no changes have been made to the proposed amendments.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Findings and Conclusions

The findings and conclusions and general findings and determinations included in the proposed rule set forth in the February 8, 2013, issue of the **Federal Register** are hereby approved and adopted.

Marketing Order

Annexed hereto and made a part hereof is the document entitled ''Order Amending the Order Regulating the Handling of Kiwifruit Grown in California.'' This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions. *It is hereby ordered,* that this entire rule be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400–407) to determine whether the annexed order amending the order regulating the handling of kiwifruit grown in California is approved by growers, as defined under the terms of the order, who during the representative period were engaged in the production of kiwifruit in the production area.

The representative period for the conduct of such referendum is hereby determined to be August 1, 2012, through July 31, 2013.

The agents of the Secretary to conduct such referendum are designated to be Rose Aguayo and Kathie Notoro, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487–5901, or Email: *Rose.Aguayo@ams.usda.gov* or *Kathie.Notoro@ams.usda.gov,* respectively.

List of Subjects in 7 CFR Part 920

Marketing agreements, Kiwifruit, Reporting and recordkeeping requirements.

Dated: July 29, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Kiwifruit Grown in California [1]

Findings and Determinations

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of kiwifruit grown in California in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order;

3. The marketing order, as amended, and as hereby proposed to be further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The marketing order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of kiwifruit produced in the production area; and

5. All handling of kiwifruit produced in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of kiwifruit grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the order contained in the proposed rule issued by the Administrator on February 4, 2013, and published in the **Federal Register** (78 FR 9331) on February 8, 2013, will be and are the terms and provisions of this order amending the order and are set forth in full herein.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 920.27 to read as follows:

§ 920.27 Alternate members.

An alternate member of the committee, during the absence of the member for whom that individual is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event both a member and his or her alternate are unable to attend a committee meeting, the committee may designate any other alternate member from the same district to serve in such member's place and stead. In the event of the death, removal, resignation, or disqualification of a member, the alternate of such member shall act for him or her until a successor for such member is selected and has qualified.

■ 3. Revise § 920.32(a) to read as follows:

§ 920.32 Procedure.

(a) Eight members of the committee, or alternates acting for members, shall constitute a quorum and any action of the committee shall require the concurring vote of the majority of those present: *Provided,* That actions of the committee with respect to expenses and assessments, production and postharvest research, market research and development, or recommendations for regulations pursuant to §§ 920.50

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

through 920.55, of this part shall require at least eight concurring votes.

* * * * *

■ 4. Add § 920.45 to read as follows:

§ 920.45 Contributions.

The committee may accept voluntary contributions, but these shall only be used to pay expenses incurred pursuant to § 920.47 and § 920.48. Furthermore, such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use.

■ 5. Add § 920.47 to read as follows:

§ 920.47 Production and postharvest research.

The committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving research designed to assist or improve the efficient production and postharvest handling of kiwifruit.

■ 6. Add § 920.48 to read as follows:

§ 920.48 Market research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of kiwifruit.

[FR Doc. 2013–18627 Filed 8–1–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 810

RIN 1994–AA02

Assistance to Foreign Atomic Energy Activities

AGENCY: National Nuclear Security Administration (NNSA), Department of Energy (DOE).

ACTION: Supplemental notice of proposed rulemaking and public meetings.

SUMMARY: On September 7, 2011, DOE issued a notice of proposed rulemaking (NOPR) to propose the first comprehensive updating of regulations concerning Assistance to Foreign Atomic Energy Activities since 1986. The NOPR reflected a need to make the regulations consistent with current global civil nuclear trade practices and nonproliferation norms, and to update the activities and technologies subject to the Secretary of Energy's specific authorization and DOE reporting requirements. It also identified destinations with respect to which most assistance would be generally authorized and destinations that would require a specific authorization by the Secretary of Energy. After careful consideration of all comments received, DOE today is issuing this supplemental notice of proposed rulemaking (SNOPR) to respond to those comments, propose new or revised rule changes, and afford interested parties a second opportunity to comment.

DATES: Written comments must be postmarked on or before October 31, 2013 to ensure consideration. DOE will hold two public meetings. The first public meeting will be held in the Large Auditorium at the U.S. Department of Energy, Forrestal Building, on August 5, 2013, from 1 to 4 p.m. DOE has also arranged a call-in line for this first meeting. Interested persons should inform DOE of their intent to participate by phone or attend in-person, as there are a limited number of lines for the call and there is limited room capacity in the auditorium. DOE asks that interested persons send their requests to participate in this meeting via email at *Part810.SNOPR@nnsa.doe.gov,* by 4:30 p.m. on August 2, 2013. To ensure in-person participation, email the request by 10 a.m., August 2, 2013. DOE will confirm its receipt of requests and, at that time, provide further logistical information, including the call-in number for those participating by phone. DOE will hold a second public meeting in September. The announcement of the second public meeting will be provided in a future **Federal Register** notice.

ADDRESSES: You may submit comments, identified by RIN 1994–AA02, by any of the following methods:

1. *Federal Rulemaking Portal: http://www.regulations.gov/#!docketDetail;D=DOE-HQ-2011-0035.* Follow the instructions for submitting comments.

2. *Email: Part810.SNOPR@hq.doe.gov.* Include RIN 1994–AA02 in the subject line of the message.

3. *Mail:* Richard Goorevich, Senior Policy Advisor, Office of Nonproliferation and International Security, NA–24, National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, DOE encourages responders to submit comments electronically to ensure timely receipt.

All submissions must include the RIN for this rulemaking, RIN 1994–AA02. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

The first public meeting for this SNOPR will be held at the U.S. Department of Energy, Forrestal Building, Large Auditorium, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Richard Goorevich, Senior Policy Advisor, Office of Nonproliferation and International Security, NA–24, National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone 202–586–0589; Janet Barsy or Elliot Oxman, Office of the General Counsel, GC–53, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone 202–586–3429 (Ms. Barsy) or 202–586–1755 (Mr. Oxman); or Katie Strangis, National Nuclear Security Administration, Office of the General Counsel, 1000 Independence Avenue SW., Washington, DC 20585, telephone 202–586–8623.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Energy's (DOE) part 810 regulation implements section 57 b.(2) of the Atomic Energy Act (AEA) of 1954, as amended by section 302 of the Nuclear Nonproliferation Act of 1978 (NNPA). Part 810 controls the export of unclassified nuclear technology and assistance. It enables peaceful nuclear trade by helping to assure that nuclear technologies exported from the United States will not be used for non-peaceful purposes. Part 810 controls the export of nuclear technology and assistance by identifying activities that can be ''generally authorized'' by the Secretary, thereby requiring no further authorization under part 810. It also controls those activities that require ''specific authorization'' by the Secretary. Part 810 also delineates the process for applying for specific authorization from the Secretary and identifies the reporting requirements for activities subject to part 810.

Part 810 has not been comprehensively updated since 1986. Since then, the global civil nuclear market has expanded, particularly in China, the Middle East, and Eastern Europe, with vendors from France, Japan, the Republic of Korea, Russia, and Canada having emerged to serve customers in these emerging markets. DOE believes the regulation should be updated to ensure that the part 810 nuclear export controls remain effective and efficient as the commercial nuclear market expands. This means carefully determining destinations and activities that are generally authorized or subject to a specific authorization, and assuring that the determinations are consistent with current U.S. national security, diplomatic, and trade policy.

On September 7, 2011, DOE issued a NOPR to propose the updating of part 810 (76 FR 55278). The NOPR listed destinations for which most assistance to foreign atomic energy activities would be generally authorized, and activities that would require a specific authorization by the Secretary of Energy. Activities requiring specific authorization are set forth in proposed § 810.7. Additionally, the NOPR identified types of technology transfers subject to the regulation. DOE received numerous comments on the NOPR. After careful consideration of all comments received, DOE today is issuing this SNOPR to respond to those comments and afford interested parties a second opportunity to comment.

As described below and in response to comments received from the public on the NOPR, this SNOPR proposes a number of substantial changes to the current rule that are different than those contained in the NOPR. Additionally, certain changes to the current rule proposed in the NOPR are re-proposed for consideration in this SNOPR. Details of the proposed changes to the current part 810 and the NOPR contained in this SNOPR are summarized in Section II and discussed in greater detail in Section IV.

II. Description of Proposed Changes

In response to the NOPR, the Department received written comments from over 30 entities, and over 3,000 form letters coordinated by the Consumer Energy Alliance. Two commenters, the Nuclear Energy Institute and a law firm on behalf of the Ad Hoc Utility Group (a number of companies that operate 56 nuclear reactors at 35 sites), offered specific text revisions to the entirety of part 810; other commenters focused more narrowly on one or more specific provisions of particular interest to the submitter. All of the comments are available for review on line at: *http://www.regulations.gov/#!docketDetail;D=DOE-HQ-2011-0035.* Docket ID: DOE–HQ–2011–0035.

This SNOPR responds to the comments received in response to the NOPR and proposes changes to the current part 810. Today's proposed changes, summarized by section, are as follows:

1. The proposed change to § 810.1 ''Purpose'' states the statutory basis and purpose for the part 810 regulation, eliminating the need for current § 810.6. Unlike the NOPR, which proposed to retain unchanged the phrase ''U.S. persons'' in the current § 810.1, today's proposal would replace ''U.S. persons'' with ''persons.'' *

2. The proposed change to paragraph (a) in § 810.2 ''Scope'' states DOE's jurisdiction under section 57 b.(2) of the Atomic Energy Act. Proposed § 810.2(b) would identify activities governed by the regulation when those activities, whether conducted in the United States or abroad, directly or indirectly result in the development or production of special nuclear material (SNM). Proposed § 810.2(c) would identify exempt activities, some retained from the current part 810 regulation, and the following are proposed to be added:

- Exports authorized by the Departments of State or Commerce, or the Nuclear Regulatory Commission;
- Transfer of ''publicly available information,'' ''publicly available technology,'' and the results of ''fundamental research'';
- Assistance for certain mining and milling activities, and certain fusion reactors because these activities do not involve the production or use of special nuclear material;
- Production or extraction of radiopharmaceutical isotopes when the process does not involve special nuclear material; and
- Transfers to lawful permanent residents of the United States or protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)).

3. In proposed § 810.3 ''Definitions,'' a number of new or revised definitions are proposed, to reflect terminological changes and technological developments since the part 810 regulation was last updated and to provide additional clarity to certain terms currently defined and used in the regulation. They are described in Section IV. D. of this Preamble.

4. Proposed § 810.4 ''Communications'' and § 810.5 ''Interpretations'' update points of contact information to reflect current Departmental organizational structure and office designations for applications, questions, or requests. The SNOPR adds a proposed new paragraph (c) to § 810.5 that reflects DOE's intent to periodically publish abstracts of general or specific

* Prior to 1986, § 810.1 and its predecessors referred to ''persons'' who engage in activities subject to part 810. 48 FR 2518 (Feb. 4, 1983); 40 FR 44846 (Sep. 30, 1975); 21 FR 418 (Jan. 20, 1956). In 1986, DOE amended § 810.1 to add ''U.S.'' before ''persons'' (51 FR 44570, Dec. 10, 1986), but did not employ that phrase anywhere else in part 810; all other provisions of the regulation in effect from 1986 to the present utilize simply ''persons.'' The solitary reference to ''U.S. persons'' in § 810.1 was unnecessary in 1986, and continued usage of ''U.S.'' is also unnecessary now. Today, DOE proposes to revert to the use of ''persons'' in proposed § 810.1.

authorizations, excluding applicants' proprietary data and other information protected by law from public disclosure, that may be of general interest.

5. Current § 810.6 ''Authorization requirement,'' which quotes section 57 b. of the Atomic Energy Act, is proposed to be deleted and replaced, as it was in the NOPR, by proposed § 810.1 ''Purpose.''

6. The current § 810.7 ''Generally authorized activities'' is today, as in the NOPR, proposed to be re-numbered as § 810.6. It would identify activities the Secretary has found to be not inimical to the interest of the United States and which may be generally authorized.

(1) Proposed paragraph (a) would generally authorize assistance or transfers of technology to destinations listed in the proposed Appendix. The current § 810.8(a) uses the opposite classification approach. It lists destinations for which a specific authorization is required.

(2) The current § 810.7(a) ''furnishing public information'' would be deleted from the list of generally authorized activities. In the NOPR, ''public information'' was proposed to be exempt from part 810. In proposed § 810.2(c)(2) of the SNOPR, ''publicly available information,'' ''publicly available technology,'' and the results of ''fundamental research'' (all as defined in proposed § 810.3) would be exempt from the scope of part 810.

(3) In a new approach to deemed exports in the SNOPR, proposed § 810.6(b) would generally authorize technology transfers to citizens or nationals of specific authorization destinations who are lawfully employed by or contracted to work for nuclear industry employers in the United States, subject to the individual meeting Nuclear Regulatory Commission access requirements and executing a confidentiality agreement to prevent unauthorized disclosure of nuclear technology to which those individuals are afforded access. Deemed export reporting requirements with respect to these individuals are set forth in proposed § 810.12(g).

(4) The existing ''fast track'' general authorization in current § 810.7(b) for emergency activities at any safeguarded facility and operational safety assistance to existing foreign safeguarded reactors was not included in the NOPR. In the SNOPR, the authorization in the current regulation is proposed to be retained, in paragraphs (c)(1) and (c)(2), respectively, but with a revised definition of ''operational safety.'' Furnishing operational safety information or assistance to existing, proposed, or new-build nuclear power plants in the United States would be authorized in proposed § 810.6(c)(3).

(5) Proposed paragraph (d) would generally authorize exchange programs approved by the Department of State with DOE concurrence, similar to the provision in § 810.6(b)(4) of the NOPR.

(6) Proposed paragraphs (e) and (f) would authorize certain cooperative activities with the International Atomic Energy Agency (IAEA), namely, activities carried out in the course of implementation of the ''Agreement between the United States of America and the [IAEA] for the Application of Safeguards in the United States''; and those carried out by full-time employees of the IAEA, or by individuals whose employment or work is sponsored or approved by the Department of State or DOE. Similar provisions were set forth in §§ 810.6(b)(3) and (5) of the NOPR.

(7) Proposed paragraph (g) would authorize transfers of technology and assistance for the extraction of Molybdenum-99 from spent nuclear fuel in certain circumstances. This provision is not in the current rule, nor was it proposed in the NOPR.

7. Proposed § 810.7—renumbered from the current § 810.8—''Activities requiring specific authorization'' would continue to list activities that would require a specific authorization for all foreign destinations. The NOPR proposed to eliminate the list and require a specific authorization for engaging in the production of special nuclear material.

8. Proposed § 810.8 ''Restrictions on general and specific authorization'' would remain unchanged from § 810.9 in the current rule and the NOPR, except for the following editorial revisions: replacing ''these regulations'' with ''this part'' in the introductory phrase; replacing ''Restricted Data and other classified information'' with ''classified information'' in proposed paragraph (a), and replacing ''Government agencies'' with ''U.S. Government agencies'' in paragraph (b).

9. Proposed § 810.9 ''Grant of specific authorization,'' currently § 810.10 and proposed § 810.9 in the NOPR, would identify the factors, consonant with U.S. international nonproliferation commitments, that would be considered by the Secretary in granting a specific authorization. Proposed paragraph (b) would add as factors to be considered: whether the government of the country concerned is in good standing with respect to its nonproliferation commitments (proposed paragraph (b)(3)); and whether, under proposed paragraph (b)(8), the transfer is part of an existing ''cooperative enrichment enterprise'' (as defined in proposed § 810.3) or the supply chain of such an enterprise. Proposed § 810.9(c) addresses the export of sensitive nuclear technology as defined in § 810.3, and would be expanded to describe additional factors, which include compliance with the U.S.'s Nuclear Suppliers Group (NSG) commitments, the Secretary would take into account when considering a specific authorization request for the transfer of sensitive nuclear technology. The United States adheres to the NSG Guidelines for Nuclear Transfers (IAEA Information Circular [INFCIRC] 254/Part1) and Guidelines for Transfers of Nuclear-related Dual-Use Equipment, Materials, Software and Related Technology (IAEA INFCIRC/254/Part 2). The current versions of both sets of Guidelines can be found at *www.nuclearsuppliersgroup.org*. As in the NOPR, a new paragraph (d) is proposed to be added, concerning requests to engage in authorized foreign atomic energy assistance activities related to the enrichment of source material and special nuclear material. Approval of such requests would be conditioned upon the receipt of written nonproliferation assurances from the government of the country concerned, a proposal designed to facilitate U.S. conformity to the Nuclear Supplier Group Guidelines.

10. Proposed § 810.10 ''Revocation, suspension, or modification of authorization,'' currently § 810.11, would (as in the NOPR) make an editorial revision, changing ''authorized assistance'' in paragraph (c) to ''authorization governed by this part.''

11. The current § 810.12, renumbered as proposed § 810.11 ''Information required in an application for specific authorization,'' would (as in the NOPR) be expanded to add more detail about the information required for DOE to process a specific authorization request, including applications for ''deemed export'' and ''deemed re-export'' authorizations. Section 810.11(a) would require the submission of the same information required by the current regulation (§ 810.12(a)). Proposed paragraph (b) would solicit any information the applicant wishes to provide concerning the factors listed in proposed § 810.9(b) and (c).

Current § 810.12(a) requires that an application for specific authorization include information regarding ''the degree of any control or ownership by any foreign person or entity''. The NOPR proposed to add a definition of the undefined term ''foreign person'' to state: ''*Foreign person* means a person other than a U.S. person''. For the reasons explained in the footnote in

Section II, Description of Proposed Changes, the SNOPR proposes to delete the term ''U.S. person'' from the first paragraph in § 810.1 of the current regulation. Since the term ''foreign person'' is used only once in the current regulation (in § 810.12(a)), and was used only once in the NOPR (proposed § 810.11(a)—unchanged from current § 810.12(a))—DOE has determined that to avoid any possible confusion between usages of ''person'' and ''foreign national'', the SNOPR proposes to revise the formulation of proposed § 810.11(a) without reference to ''foreign person''. Instead, proposed § 810.11(a)(1) would request information concerning an applicant's foreign ownership or control by asking about ''the degree of any control or ownership by any foreign individual, corporation, partnership, firm, association, trust, estate, public or private institution or government agency''.

Proposed paragraph (c) has been modified from proposed language in the NOPR but would continue to address the required content for applications filed by U.S. companies seeking to employ in the United States citizens or nationals of specific authorization countries that would result in the transfer of technology subject to proposed §§ 810.2 or 810.7 (deemed exports). Submission of the same information would also be required with respect to any such citizen or national whom the part 810 applicant seeks to employ abroad in either a general or specific authorization country (a deemed re-export). Under today's proposal, no part 810 authorization would be required for an individual who is lawfully admitted for permanent residence in the United States or is a protected individual under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)).

The SNOPR proposes that § 810.11(c) would make explicit DOE's current practice of requiring an applicant for a specific authorization to provide detailed information concerning the citizenship, visa status, educational background, and employment history of each foreign national to whom the applicant seeks to grant access to technology subject to the part 810 regulation. In addition, the applicant would be required to provide a description of the subject technology, a copy of any confidentiality agreement between the U.S. employer and the employee concerning the protection of the employer's proprietary business data from unauthorized disclosure, and written nonproliferation assurances by the individual. Finally, proposed paragraph (d) would identify the information required to be submitted by an applicant seeking a specific authorization to engage in foreign atomic energy assistance activities related to the enrichment of fissile material.

12. The current § 810.13, renumbered as proposed § 810.12, would be changed by proposed changes in reporting obligations. A proposed addition in § 810.12(d) would require companies to submit reports to DOE, to include information required by U.S. law concerning specific civil nuclear activities or exports to countries for which a specific authorization is required. Under proposed § 810.12(e)(4), the reference to reporting on materials and equipment would be retained to ensure that any technical data that is transferred as part of dual-use equipment is reported. Proposed paragraph (g) is new and describes the reporting requirements of U.S. employers with respect to their deemed export and deemed re-export employees.

13. The current § 810.14, § 810.15 and § 810.16 would, as in the NOPR, be renumbered as proposed § 810.13 ''Additional information,'' proposed § 810.14 ''Violations,'' and proposed § 810.15 ''Effective date and savings clause.''

III. Public Comment Procedures

Interested persons are invited to submit comments on this regulatory proposal. Written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments submitted in writing or in electronic form may be made available to the public in their entirety. Personal information such as your name, address, telephone number, email address, etc., will not be removed from your submission. Comments will be available for public inspection in the DOE Freedom of Information Act Reading Room, and on the Internet at: *http://www.regulations.gov/#!docketDetail;D=DOE-HQ-2011-0035.*

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of Information regulations at 10 CFR 1004.11.

Public Meeting

The first public meeting will be held at the time, date, and place indicated in the **DATES** and **ADDRESSES** sections of this SNOPR. Any person who is interested in attending in-person, participating by phone, or making an oral presentation in-person or through the call-in line should email a request to the email address in the **DATES** section by the date and time specified for making such requests. As noted in the **DATES** section, the number of lines available to call into the meeting is limited. For all oral presentations, the person should provide a daytime phone number where he or she can be reached. Each oral presentation may be limited and may in no instance be longer than 20 minutes. Persons making an oral presentation in-person are requested to bring 3 copies of their prepared statement to the public meeting and submit it to the registration desk. Persons making an oral presentation through the call-in line are requested to email their statement either before or after the public meeting to the email address in the **DATES** section. DOE reserves the right to select the persons who will speak. DOE also reserves the right to schedule speakers' presentations and to establish the procedures for conducting the meeting. A DOE official will be designated to preside at the meeting. The meeting will not be a judicial or evidentiary-type hearing. Any further procedural rules for the conduct of the meeting will be announced by the presiding official. After the public meeting, interested persons may submit further comments until the end of the comment period. A transcript of the meeting will be made, and the entire record of this rulemaking will be retained by DOE and posted at *regulations.gov*.

IV. Discussion of Comments Received on the September 2011 NOPR

Overview

As noted above in Section II, Description of Proposed Changes, DOE received written comments on the NOPR from over 30 individual entities and over 3,000 form letters from entities coordinated by the Consumer Energy Alliance.

The commenters represented diverse interests and raised concerns about different sections of the proposed rule, but they acknowledged the important goals of part 810:

• *Effective threat reduction.* Part 810 should be updated to more effectively address proliferation challenges, as there have been significant changes in geopolitics, economics, technologies

and relationships between the United States and its nuclear trading partners since the regulation last underwent comprehensive revision in 1986.

• *Effective nuclear trade support.* Part 810 should support U.S. companies competing to provide nuclear technology for peaceful purposes in global civil nuclear reactor markets.

• *Efficient regulation.* The part 810 licensing process should be efficient, transparent, timely, and predictable. The cost of regulation to the government and industry should not exceed the benefits. Duplicative or unnecessary regulatory requirements should be avoided.

DOE has reviewed the comments and now proposes in this SNOPR to further revise part 810 based on considerations of those comments. The comments were analyzed and placed into three categories:

A. Process Issues

B. Classification of Foreign Destinations

C. Activities Requiring Part 810 Authorization

A. Process Issues

1. Compliance With Administrative Procedure Act Rulemaking Requirements

Multiple commenters claimed the NOPR contravened various requirements of the Administrative Procedure Act (APA) and various Executive Orders. The alleged defects were:

• *Inadequate notice and opportunity to comment*—failure to explain DOE's rationale for proposed changes sufficient to permit meaningful comment by interested parties.

• *Inadequate impact analysis*—failure to consider the economic and paperwork impacts of the proposed rule changes and their consistency with other U.S. export control regulatory regimes and U.S. trade policies, including the National Export Initiative and Export Control Reform Initiative.

• *Unreasonable effective date*—failure to give exporters enough time to comply before the rule becomes effective.

The issuance of this SNOPR, which includes explanatory rationales of the revisions proposed, provides another opportunity for the public to comment on changes DOE is considering with regard to part 810. Additionally, working together with the Department of Commerce, DOE completed an economic analysis that considers the potential impacts of the amendments contained in this SNOPR.

With respect to the effective date of the final rule, on December 2, 2011, DOE posted at *http://www.regulations.gov/#!docketDetail;D=DOE-HQ-2011-0035* in Docket DOE–HQ–2011–0035 a clarification, in response to commenters' request, of the dates stated in the NOPR's proposed § 810.15 ''Effective date and savings clause.'' DOE explained that the references to ''October 7, 2011'' and ''December 6, 2011'' were placeholders calculated in the publication process for the NOPR. The effective date and savings clause of any final part 810 rule would be calculated from the publication date of the final rule and would provide sufficient time for exporters to comply with the rule as adopted.

2. Part 810 Process Improvements

Many commenters maintained that the part 810 approval process is unduly protracted, and that processing delays put U.S. suppliers at a competitive disadvantage with companies in other countries. Many concerns with the NOPR indicated less a problem with the merits of the proposed changes than with the commenters' belief that the proposed rule revisions would impermissibly broaden the scope of part 810. Given the reduced number of destinations proposed to be generally authorized, commenters expressed concern that the overall proposed changes to part 810 would mean even longer application preparation and DOE processing times for specific authorizations, resulting in lost business opportunities for U.S. companies during the authorization process. These commenters asked for changes to make the part 810 application processes more orderly and expeditious. Among the recommendations received were:

a. Make Part 810 Processes More Transparent, Orderly, and Efficient

The Department acknowledges commenters' concerns that the time frame for issuance of specific authorizations can impose business risks for companies seeking to make nuclear exports requiring specific authorization. The process can also be made more open and understandable. Accordingly, the Department has initiated a process improvement program with the goal of making the authorization process International Standards Organization (ISO) 9001 compliant. The Department is interested in receiving public comments on the process changes discussed in this notice as well as other suggestions and ideas on how to make the Department's authorization process more transparent, efficient and comprehensible. As an initial step to improve understanding of the new part 810 application process, DOE is offering Figure 1, a simplified graphic decision tree, and Figure 2, a simplified process map.

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Figure 1: Part 810 Application Decision Tree

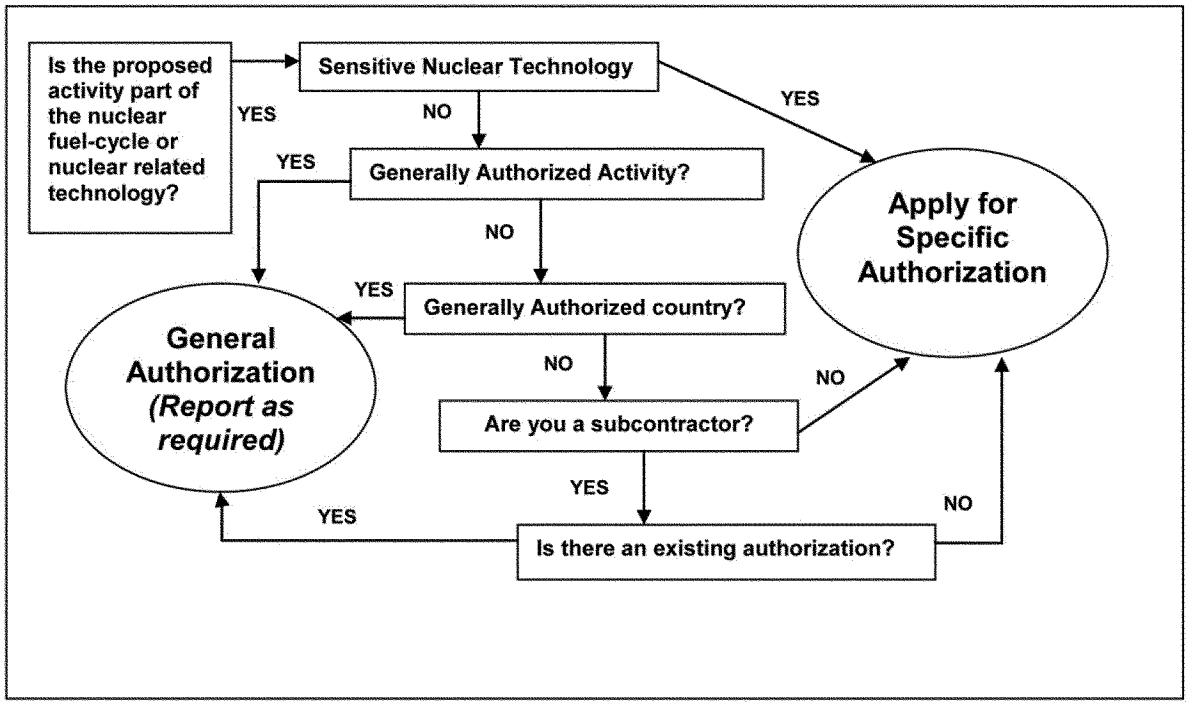
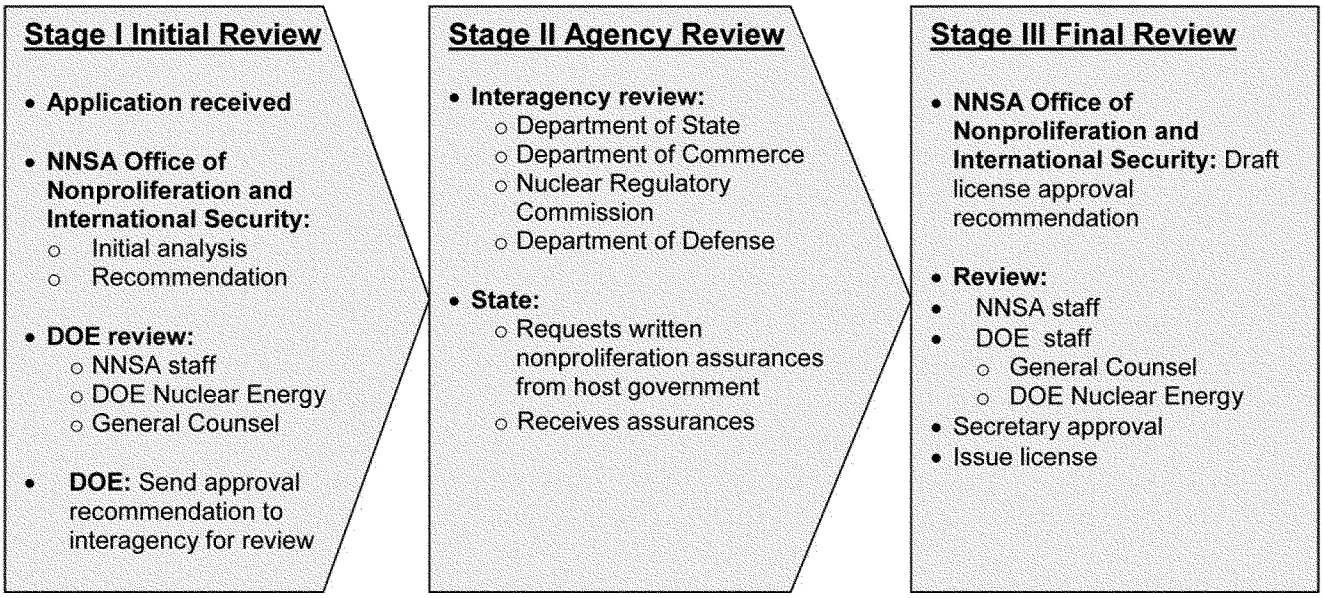


Figure 2: Part 810 Specific Authorization Process Steps



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The following process changes to make the licensing process more open and efficient are under consideration:

• Awaiting receipt of foreign government nonproliferation assurances frequently delays the grant of part 810 specific authorizations. Sovereign foreign governments can be asked to respond promptly, but they cannot be mandated to do so. However, in concert with the Department of State, DOE is considering measures to improve the timeliness of foreign government response times.

• Reduce timeframes for internal DOE and interagency reviews.

• Develop and implement an e-licensing system to provide more

uniform and transparent authorization standards and practices.

• Publish periodically, as appropriate, abstracts of general or specific authorizations that may be of general interest, redacting company-identifying and proprietary business information, to increase transparency.

• Publicly report on the number of specific authorizations sought, approved and rejected, and the average authorization processing time, to enhance transparency and accountability.

• Create expedited procedures for authorization of activities that present the lowest proliferation risk, as determined by the criteria proposed in § 810.9(b).

Many of these actions were proposed by commenters and have merit: as noted, DOE is initiating a process quality improvement program to make the processing of part 810 applications more orderly, expeditious, effective, and transparent. These internal process changes can be made independently of the rulemaking process. Consequently, conclusion of this part 810 rulemaking should not be delayed during the time internal Departmental process changes are developed and implemented. In the interim, DOE will continue to adhere to current interagency procedures for processing, reviewing and approving specific authorizations as set forth in the ''Amendment to Procedures Established Pursuant to the Nuclear Nonproliferation Act of 1978.'' 49 FR 20780 (May 16, 1984).

b. Specific Authorization Practices

The NOPR proposed that specific authorizations ''generally will be for a period up to five years.'' Commenters noted that the proposal was cast as a generalization about an authorization whose term should depend on specific circumstances. Upon consideration, the rule proposed today omits any reference to a time period for part 810 authorizations, leaving the term of specific authorizations to be established, as at present, on a case-by-case basis. There were no adverse comments on the proposed § 810.9 in the NOPR, which identifies the factors that would be considered by the Secretary in granting a specific authorization.

One commenter recommended that, prior to revoking a specific authorization before its expiration, DOE should be required to consult with the same agencies with which it consults before approving the specific authorization in the first instance. Today's supplemental proposed rule would not adopt specific regulatory language to require such a procedure because expeditious action may be required; however, interagency collaboration would be the norm in these circumstances.

c. Reports on Authorized Activities

Commenters noted that proposed § 810.12(d) of the NOPR referred to reporting requirements for any activity under proposed § 810.6, but subsection (f) stated that persons engaging in activities generally authorized under proposed § 810.6(b) would *not* be subject to reporting requirements under this section. The inconsistency was a drafting error, which has been corrected. Today's proposal continues the current requirement; reports would be required for generally authorized activities. New requirements have been proposed in today's SNOPR for reporting by U.S. companies with respect to their deemed export and deemed re-export employees.

B. Classification of Foreign Destinations

Under the authority of section 57 b.(2) of the AEA, the Secretary may authorize the export of assistance or the transfer of technology for the development or production of special nuclear material by persons subject to U.S. jurisdiction upon a determination that the activity will not be ''inimical'' to the interest of the United States. Classification of activities and foreign destinations as ''generally authorized'' or, conversely, the determination that other activities and destinations merit a specific authorization, is a matter committed to agency discretion. The Secretary's decision that a specific authorization is or is not required for a particular proposed export is based on U.S. nuclear and national security policies. Consonant with those policies, the Secretary therefore may determine that a country or entity is either generally authorized or requires a specific authorization. Under the AEA, the Department is to promote widespread participation in the development and utilization of atomic energy for peaceful purposes. The AEA, however, makes national security the paramount concern. Consequently, assistance to, participation in, or technology transfer for, the development or production of special nuclear material outside the United States may be authorized only upon a determination by the Secretary that such activities will not be ''inimical to the interest of the United States,'' such determination to be made only with the concurrence of the Department of State and after consultation with the Nuclear Regulatory Commission, the Department of Defense, and the Department of Commerce.

Multiple commenters objected that exports to some countries that do not require a specific authorization under the current part 810 classification approach would require a specific authorization under the NOPR that DOE proposed on September 7, 2011. Classification of activities by destination as ''generally authorized'' is an administrative tool to avoid unnecessary reviews of foreign atomic energy assistance activities in countries that present little or no proliferation risk, and are known nuclear trading partners. General authorizations reflect the assessment that the Secretary can make a non-inimicality finding regarding the provision of assistance and technology to particular countries on an advance programmatic basis, without performing a transaction-specific analysis or obtaining specific nonproliferation assurances from the government of the intended foreign recipient.

Historically, the Department's approach has been to identify those countries that pose inimicality concerns and to require exporters to obtain specific authorizations for assistance to those countries. Over time, the part 810 list of countries for which specific authorizations are required has become outdated. One country on the list no longer exists (Yugoslavia). Kazakhstan, Ukraine and the United Arab Emirates have become civil nuclear trading partners of the United States pursuant to an Agreement for Cooperation under section 123 of the AEA (''123 Agreement''). For example, in 2009 the United Arab Emirates entered into a 123 Agreement with the United States.

In recognition of the fact that global markets for peaceful nuclear energy and nuclear fuel cycle trading relationships have become more dynamic in recent years, the NOPR proposed to change the approach of classifying foreign destinations, from listing destinations for which a specific authorization is required to establishing a list of generally authorized destinations for which a specific authorization would not be required. The SNOPR continues the NOPR's proposed approach. The SNOPR includes a proposed Appendix that lists destinations to which unclassified nuclear assistance or technology transfers would be generally authorized. The Appendix would be maintained, revised, and updated in accordance with the requirements of the Administrative Procedure Act (5 U.S.C. § 553).

A destination is included on the proposed generally authorized list based on the Secretary's ''not inimical'' determination required by section 57 b. (2) of the AEA. Examples of types of

considerations taken into account include the existence of a 123 Agreement with the United States, a full scope safeguards agreement with the IAEA, satisfactory experience as a civil nuclear trading partner, and compliance with international nonproliferation regimes. The proposed affirmative approach of listing the generally authorized destinations rather than the destinations requiring a specific authorization would be more consistent with the U.S. Government's national security obligations and nuclear nonproliferation policies.

Multiple companies and industry groups commented that under the proposed destination classification approach in the NOPR, there would be 77 current destinations for which specific authorization is not now required, but under the NOPR approach would be required. These commenters feared such reclassification would create an undue burden on nuclear commerce, and an administrative burden on U.S. companies and the Department, as more activities would require specific authorization.

DOE's analysis of civil nuclear trade with the countries whose general or specific authorization classification would be changed indicates that the predicted burdens of the proposed change would be less substantial, and more manageable, than commenters claimed. Confidential reports companies file with DOE regarding generally authorized activities show minimal current civil nuclear commerce with countries that are ''generally authorized'' destinations under the current rule but that would not be generally authorized under the SNOPR. This confirms the conclusion of the Economic Impact Analysis DOE performed and which is summarized in Section V.A. That analysis indicates that potential trade volumes in countries proposed to be changed from generally authorized status, and where U.S. trade may be adversely affected by the proposed change, are a very small part of the global nuclear market, and they are about half the size of the markets in the three countries proposed to move to generally authorized status, and where U.S. trade would be favorably affected by the change. Many of those reports concern foreign nationals working at U.S. nuclear installations, not nuclear trade activity. Most importantly, any anticipated additional burdens do not overcome the sound national security reasons for the Department's proposed approach to classification of foreign destinations.

1. Generally Authorized Destinations

There were no objections from the NOPR commenters about the 47 destinations proposed to be placed on the generally authorized destinations list. Those destinations are listed in the proposed Appendix of this SNOPR. The Secretary has determined that the provision of assistance or transfer of technology related to the development or production of special nuclear material to these countries and the International Atomic Energy Agency as described in proposed § 810.2(b) is not inimical to the interest of the United States. Each country and the IAEA has in force a 123 Agreement with the United States, the country has an acceptable IAEA safeguards regime, or there is a Project and Supply Agreement among the country, the United States, and the IAEA. Many general authorization destinations are well established, long-term U.S. civil nuclear trading partners, such as Japan, Australia, Canada, the Republic of Korea, and the EURATOM member countries. Others, like Poland, South Africa, Turkey, and Thailand, are less active in civil nuclear commerce, but have demonstrated interest in U.S. technical assistance by entering into discussions with U.S. companies for development of civil nuclear programs. As in the NOPR, three countries on the current specific authorization destination list are now proposed to be generally authorized destinations: Ukraine, the United Arab Emirates, and Kazakhstan. Each has entered into a 123 Agreement with the United States and actively is engaged in peaceful civil nuclear activities.

Several NOPR commenters noted that the United States has had a long, peaceful nuclear trading relationship with Mexico, even though the two countries do not have a 123 Agreement. Commenters claimed the proposed rule would disrupt the provision of technical assistance to the existing Laguna Verde nuclear power station, a U.S.-designed nuclear power plant that continues to rely on U.S.-supplied equipment and assistance. Commenters pointed out that this assistance has taken place under a Project and Supply Agreement among the United States, Mexico, and the IAEA. Similarly, Chile recently signed a Project and Supply Agreement with the United States and the IAEA concerning the supply of fuel to two research reactors in Chile. In addition, Mexico and Chile are parties to the Treaty on the Nonproliferation of Nuclear Weapons (NPT) and have safeguards agreements with the IAEA, including Additional Protocols. These facts are sufficient for the Secretary to make a non-inimicality determination. The Department has considered the comments in light of the Mexico Project and Supply Agreement and has determined that certain specified transfers will not be inimical to U.S. interests. The Department proposes in this SNOPR to include in the Appendix to this part those activities in Mexico related to IAEA INFCIRC/203 Parts 1 and 2 and INFCIRC/825, and activities in Chile related to IAEA INFCIRC/834. If the public has any comments regarding other agreements equivalent to 123 Agreements, as a basis to designate additional countries as generally authorized, DOE would welcome them.

2. Continued Specific Authorization Destinations

Assistance or the transfer of technology related to the development or production of special nuclear material to 73 destinations that are on the current § 810.8(a) list of specific authorization destinations would continue to require specific authorization under today's proposed rule. Historically, most of the specific authorization destinations did not have 123 Agreements, comprehensive safeguards, or similar agreements with the IAEA, so any proposed assistance presented actual or potential proliferation risks that merited close scrutiny. Countries in this group include Afghanistan, Belarus, Iran, Iraq, Israel, Democratic People's Republic of Korea, and Pakistan. Some countries are in volatile or unstable regions. No NOPR commenters objected to retaining the specific authorization requirements for countries that currently require specific authorization, except with respect to China, India and Russia.

Multiple commenters advocated moving China, India, and Russia from the specific authorization list to the general authorization list. They stressed the fact that the United States has entered into 123 Agreements with each country, and that each country already has nuclear weapons and the technology to produce fissile material in support of such programs. They asserted that requiring applicants to secure a specific authorization for transfers to those countries hampers the ability of U.S. companies to compete effectively in global civil nuclear commerce.

After duly considering the comments and consulting with the Departments of State, Commerce and Defense, and the Nuclear Regulatory Commission, DOE remains of the view that it is not appropriate to change the part 810 specific authorization status of these

three countries at this time. Continuing their current status is justified for diplomatic and national security reasons, and in the case of India, for legal considerations. For India, the end-user accountability requirements Congress enacted in the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 (22 U.S.C. 8001) make it infeasible to classify India as a generally authorized destination. The information required to be submitted in an application for a specific authorization for part 810 exports to India is needed to provide information for the project-by-project and end-user review accountability and reporting with respect to India as required by that statute. China and Russia are nuclear weapons states that have not provided the level of transparency regarding the division between their respective civilian and military nuclear programs to warrant general authorization of transfers of technology and assistance for peaceful use. DOE has granted numerous nuclear technology export authorizations to both China and Russia over the years. DOE would expect to continue making such authorizations in the future, based upon consideration of the specific facts of each proposed transaction.

DOE recognizes that increasing the number of destinations for which specific authorization is required has the potential to increase the time required to process a larger number of part 810 applications. If the SNOPR as proposed today is adopted, DOE will closely monitor application processing times as it works to improve the part 810 approval process consonant with maintaining the ability of U.S. companies to compete effectively in global markets.

3. Generally Authorized Destinations Proposed To Require Specific Authorization

DOE received many comments about the number of current generally authorized destinations that are proposed to be specifically authorized destinations. Most of these countries have no civil nuclear programs, are unlikely to have nuclear programs in the foreseeable future, have not signed a 123 Agreement with the United States, or are not parties to the NPT. Countries in this group include Belize, Ethiopia, Lebanon, Liechtenstein, and Nepal. There is no reason to place countries that have not expressed interest in civil nuclear trade on the proposed generally authorized list. Without such interest, there is little reason or basis for the Secretary to make a non-inimicality finding. Since the NOPR's publication, the 123 Agreements of Peru and Bangladesh have expired. Accordingly, Peru and Bangladesh have been removed from the proposed generally authorized destinations set forth in the proposed Appendix in today's SNOPR.

Some commenters suggested that U.S. nuclear companies may want to hire citizens from what would be former generally authorized destinations, presenting a ''deemed export'' issue for the employer. Similarly, commenters asserted that some U.S. companies are interested in marketing to, or sourcing nuclear goods and services from, these countries for use in the United States. Concerns related to deemed exports, marketing and supply chain activities are more appropriately addressed in Section IV.C. 3. as an activity issue, rather than as a destination issue. There is no need to add destinations to the proposed generally authorized list to resolve activity issues.

4. Emerging Civil Nuclear Trading Partner Countries

Some commenters objected to DOE's proposed classification of emerging civil nuclear countries such as Saudi Arabia, Jordan, Philippines, and Malaysia as requiring specific authorization. Commenters noted these countries are planning to develop indigenous nuclear power programs but have not yet concluded 123 Agreements with the United States. DOE supports growing civil nuclear trade for peaceful purposes with these countries. However, granting them generally authorized status at the present time would be premature, since there is little basis for a non-inimical determination. Information needed for such a determination normally is provided through a Nuclear Proliferation Assessment Statement which is required for Section 123 Agreements. The first step for consideration as a candidate for classification as a generally authorized destination generally would be a country's conclusion of a 123 Agreement with the United States. After that, DOE would consider factors such as compliance with international nonproliferation regimes prior to designation of the country as a generally authorized destination. DOE would also consider adding to the Appendix other countries that are party to a Project and Supply Agreement with the United States and the IAEA, even if they do not have a 123 Agreement. Special effort will be made to work with such countries to engage with their governments to develop swift processes for obtaining nonproliferation assurances until such time as they can be added to the general authorization list.

Conclusion:

DOE proposes in today's SNOPR to retain the destination classifications proposed in the NOPR unchanged, except for the addition of Mexico and Chile (with respect to specific activities under the applicable IAEA Information Circulars) to the list of generally authorized destinations, the addition of the IAEA as a generally authorized destination, and the deletion of Bangladesh and Peru as generally authorized destinations.

C. Activities Requiring Part 810 Authorization

1. Special Nuclear Material Nexus Requirement

Part 810 implements provision (2) of AEA section 57 b. for activities:

(1) By any person;

(2) Directly or indirectly engaging or participating in the development or production of special nuclear material; and

(3) Outside the United States.

Multiple commenters claimed the proposed regulation in the NOPR would extend the scope of part 810 to activities that do not assist or participate in the development or production of special nuclear material. Because the AEA prohibits (subject to stated statutory conditions) *indirect* participation in the development or production of special nuclear material, the Secretary has broad discretion to determine which activities, in addition to those which directly involve engagement or participation in the development or production of special nuclear material outside the United States, indirectly constitute such engagement or participation and consequently are within the scope of part 810 and need to be specifically authorized. This discretion is balanced against the declared policy of the AEA in section 1 b. that the ''development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise.'' Whether an activity should be generally authorized or specifically authorized is a policy matter.

2. Activities Supporting Commercial Power Reactors

Multiple parties commented that the scope of ''nuclear reactor'' activities in § 810.2 should be limited to reactor technologies that produce special nuclear material and are of significant proliferation concern. Commenters

recognized that assistance to foreign production reactors should be subject to specific authorization but maintained that some forms of assistance to foreign power reactors have little or no relationship to the production of special nuclear material. Commenters noted that the low-enriched uranium in fuel is subject to material accountability and control programs from the enrichment facility to the reactor. They pointed out that power reactor production of spent nuclear fuel is not a particularly proliferation-sensitive activity because spent nuclear fuel is not useful without reprocessing, an activity that directly produces special nuclear material, and requires specific authorization.

Assistance to foreign power reactors historically has been within the scope of part 810, and DOE believes it should remain so because the reactors use special nuclear material as fuel and produce special nuclear material (the plutonium contained in spent nuclear fuel). Historically, part 810 has generally authorized assistance to commercial power reactors in most nations and safety-related assistance even to reactors in specific authorization countries. Upon consideration of the comments, the Department believes that the interest in an orderly and expeditious part 810 application review process would be advanced by requiring a specific authorization only for assistance relating to the items within or attached directly to the reactor vessel, the equipment that controls the level of power in the core, and the equipment or components that normally contain or come in direct contact with or control the primary coolant of the reactor core. Today's proposed definition of ''nuclear reactor'' in § 810.3 and the scope of part 810 in proposed § 810.2 are consistent with the NRC's definition in 10 CFR 110.2 and list of NRC-regulated components at Appendix A to Part 110-Illustrative List of Nuclear Reactor Equipment Under NRC Export Licensing Authority, and items within what is commonly considered to comprise the nuclear steam supply system. These proposed changes to § 810.3 and § 810.2 are responsive to commenter requests for a clear description of reactor technology subject to part 810 and consistency with other regulatory programs.

3. ''Deemed Exports'' and ''Deemed Re-exports''

Many commenters claimed that requiring U.S. employers to obtain specific authorization for their foreign employees working in the United States, combined with the reduced number of generally authorized countries under the proposed approach to destination classification, could prevent U.S. nuclear employers from hiring the best available qualified people and adversely impact the operation of U.S. nuclear facilities and the ability of vendors to compete globally. It is well established that any transfer of part 810-controlled nuclear technology to a foreign national is ''deemed'' to be an export to the country of citizenship or lawful permanent residence of the individual, whether the transfer takes place in the United States (a ''deemed export'') or abroad (a ''deemed re-export''). Commenters contended that providing nuclear technology to foreign employees so they can work at nuclear companies in the United States cannot lead to even the indirect production of special nuclear material in foreign facilities, and any risk of unauthorized exports by these employees would be mitigated if the U.S. employer: (1) follows the NRC access authorization standards for facility access or access to information such as those found in 10 CFR part 10 (Criteria and Procedures for Determining Eligibility for Access), part 26 (Fitness for Duty) or part 73 (Physical protection of plants and materials) for the foreign employee; and (2) enters into a confidentiality agreement with the employee. Commenters recommended that DOE rely upon employer compliance with NRC access requirements for non-U.S. citizens working in U.S. nuclear facilities and employee confidentiality agreements to prevent wrongful use or disclosure of the employer's sensitive nuclear technology. The commenters asserted that compliance with this procedure would suffice to protect the technology, obviating the need to require duplicative access authorization under part 810.

DOE considered these comments and, after consultation with the NRC, proposes to accept the commenters' recommendation. Under today's SNOPR, § 810.6 would generally authorize technology access to citizens and nationals from specific authorization countries working for U.S. employers in the United States at an NRC-licensed facility provided that the employee:

- Is lawfully employed by or contracted to work for a U.S. employer in the United States;
- Executes a confidentiality agreement with the U.S. employer that safeguards the technology from unauthorized use or disclosure; and
- Has been granted unescorted access in accordance with NRC 10 CFR part 10, part 26 or part 73 at an NRC-licensed facility.

The employer authorizing access to the technology would be required to report the access as proposed in § 810.12(g).

This approach would recognize authorization under established NRC standards and the employer's interest in protecting its confidential information as sufficient control of technology transferred to foreign employees working in the United States. This approach is intended to address situations comparable to those covered by the Department of Commerce's deemed export rule in 15 CFR 734.2(b)(2) of the Export Administration Regulations. U.S. employers seeking to employ foreign nationals to engage in activities requiring specific authorization as described in proposed § 810.7 would continue to require a specific authorization under part 810 in all circumstances.

The SNOPR amends the definition of ''foreign national'' as proposed in the NOPR; the current regulation does not utilize the term ''foreign national''. This term was included, and defined, in the NOPR to describe the category of individuals with respect to whom citizenship, employment background, and other information is required before specific authorization for technology transfers as described in § 810.11(c) of the NOPR may be approved; i.e., deemed exports or deemed re-exports. In the SNOPR, the proposed definition of ''foreign national'' has been revised to add the phrase ''but excludes U.S. lawful permanent residents and protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)''. This proposed addition clarifies the definition of ''foreign national'' by stating in one place who is and is not considered to be a foreign national; in the NOPR this matter was set forth in proposed § 810.11(c).

Proposed §§ 810.11 and 810.12, as in the NOPR, would make explicit DOE's current practice of requiring the employer to provide detailed information on the foreign national employee's background, a description of the subject assistance or technology, a copy of the confidentiality agreement with the employee, and written nonproliferation assurances by the foreign national employee. Proposed § 810.12, similar to the requirements of the NOPR, would delineate the reporting requirements for U.S. companies giving foreign national employees access to part 810-controlled technology.

Finally, it has been DOE's practice to consider nuclear technology transfers to

individuals who are lawfully admitted for permanent residence in the United States or who are protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)) the same as transfers to U.S. citizens, and therefore not exports. This practice is reflected in proposed § 810.2(c)(6) as an exemption from part 810.

4. Technology Transfers to Individuals With Dual Citizenship or Permanent Residency

Several companies and industry groups commented that the provisions in proposed § 810.11(c) of the NOPR did not provide clarity on the application of the rule to individuals with dual citizenship or citizens of specific authorization countries with lawful permanent residence in a generally authorized country.

Commenters recommended that citizenship for part 810 purposes be determined by the country of the individual's most recent citizenship or permanent residence—rather than the country with the more restrictive authorization status. Use of the most recent country of citizenship or permanent residence would mean, for example, that a transfer of nuclear technology to an individual who is a citizen of a special authorization country and who later obtained lawful permanent residence in a generally authorized country would be generally authorized since the transfer of nuclear technology would be to a generally authorized destination. Commenters represented that adoption of this approach would enable nuclear partner countries in the European Union to comply with European Union non-discrimination laws.

The SNOPR does not resolve the dual nationality/lawful permanent residence issue. After due consideration, DOE has decided that it is not appropriate to address this matter by rule. Unlike exports subject to the Department of Commerce's Export Administration Regulations, nuclear technology transfers administered by DOE under part 810 require further scrutiny of the end use, in order to ensure adherence to United States nonproliferation commitments as a member of the Nuclear Suppliers Group. The authorization decisions in these situations are fact-specific, and DOE will continue to deal with them on a case-by-case basis.

5. Operational Safety Activities

In 1993, part 810 was revised to establish a new general authorization for assistance that would enhance the operational safety of existing civilian nuclear power reactors in specific authorization countries. The 1993 general authorization built on the prior general authorization for assistance to prevent or correct an existing or imminent radiological emergency posing a significant danger to public health and safety. Unlike for other generally authorized activities, the operational safety authorization was not automatic. It required DOE's written approval within 30 days, rather than the longer review and approval process required for specific authorizations. To assist applicants in determining whether the assistance they proposed qualified for ''fast track'' treatment, a definition of ''operational safety'' was added to § 810.3 ''Definitions.''

The NOPR proposed to eliminate the 1993 fast track general authorization for operational safety, but to retain the general authorization to address current or imminent radiological emergencies when no other means to address the emergency is available. The NOPR also proposed to delete the definition of ''operational safety.'' Multiple commenters objected that the NOPR changes would restrict U.S. public and private entities from participating in cooperative efforts to promote nuclear safety. They favored retaining the fast track general authorization.

The 1993 revision to part 810 was necessary to authorize expedited assistance to civilian nuclear reactors in specific authorization countries. Commenters on the NOPR pointed out that with DOE's proposed destination classification approach, there would be no specific authorization country list. Operational safety assistance from U.S. companies therefore would need specific authorization in many countries that are currently generally authorized destinations.

A primary purpose of the 1993 amendments was to recognize the public interest in civilian reactor safety and the U.S. Government's interest in international cooperation to improve the safety of reactors worldwide. Commenters pointed out that assessments and benchmarking of U.S. and foreign reactor practices performed by international teams supported by the Institute of Nuclear Power Operators and the World Association of Nuclear Operators and U.S. nuclear companies serve the U.S. national interest in global reactor safety. The Department has determined that activities approved or carried out by the Nuclear Regulatory Commission or the Department of State may be either exempt under § 810.2(c)(1) or generally authorized under § 810.6(d) of today's proposed regulations.

A second purpose of the 1993 amendments was to ''enable U.S. firms to compete more effectively with foreign competitors for safety-related nuclear business.'' This objective is consistent with the policy statement in section 1 b. of the AEA supporting the development, use, and control of peaceful nuclear energy and strengthening free competition in private enterprise. Commenters asserted that eliminating the fast track authorization would reduce the ability of U.S. firms to compete effectively for safety-related nuclear business. Commenters explained that U.S. companies are not the exclusive source of services for operating reactors, and if U.S. regulations inhibit U.S. companies from doing work on a foreign reactor, non-U.S. companies will provide the service. Commenters maintained that eliminating the ''fast track'' would reduce U.S. competitiveness in global markets and U.S. Government influence on foreign nuclear programs.

A third purpose of the 1993 amendments was to ''eliminate unnecessary paperwork and time-consuming bureaucratic delays'' when public safety was at stake. The current ''fast track'' procedure combines a prior notification and approval requirement with a requirement that DOE review and act on the request on an expedited basis. The Department's experience with fast track requests has not been entirely satisfactory. The ''fast track'' has been used very seldom in the years since 1993, and many requests have not tied proposed assistance to established safety standards. Unsupported assertions that a service is safety-related to obtain expedited consideration and approval for an activity that merits a full-scale review do not serve the interests of industry or national security. However, the system worked as intended during the 2011 Fukushima Daiichi disaster, and DOE promptly used the existing emergency authority to permit rapid U.S. industry response to Japan's request for assistance.

Based on these considerations, DOE today proposes to retain the fast track procedure for safety-related requests, with some modifications as follows:

- Proposed § 810.6(c)(1) would generally authorize assistance to prevent or correct a current or imminent radiological emergency with 48 hour prior notice to DOE;
- Proposed § 810.6(c)(2) would continue the fast track general authorization for safety-related assistance to existing safeguarded foreign commercial reactors. The assistance must support the reactor operator's compliance with national or

international safety requirements or standards. To obtain fast track approval, the applicant would be required to provide DOE notice at least 45 days before the start of the activity, and could proceed only after receiving DOE's approval in writing;

- Proposed § 810.6(c)(3) would generally authorize safety-related assistance to nuclear power plants in the United States; and
- Proposed § 810.6(d) would generally authorize assistance pursuant to exchange programs approved by the Department of State in consultation with DOE, in addition to the exemption in proposed § 810.2(c)(1) for activities authorized by other agencies.

6. Offshore Activities: ''Control-in-Fact''

Some companies and industry groups commented on the NOPR that the existing § 810.2(b) provision that makes part 810 controls applicable to activities conducted abroad by foreign licensees, contractors and subsidiaries subject to control by persons under U.S. jurisdiction is overly broad and confusing. One commenter recommended that applicability be limited to foreign-controlled subsidiaries, with control determined by reference to corporate governance arrangements. The applicability determination depends on the degree of control that the person subject to U.S. jurisdiction has over the assistance transaction, not the legal status of its subsidiary or other affiliate. The inquiry to determine whether there exists sufficient control to make part 810 applicable to a given proposed transfer of nuclear assistance depends on the specific circumstances of the transaction, not merely corporate governance provisions. DOE has considered the comments and today proposes to retain proposed § 810.2(a)(2) substantially as proposed in the NOPR and not to include a mechanistic formula to determine when control-in-fact exists.

7. Back-end Activities

The proposed regulations in the NOPR expressly added certain back-end of the fuel cycle activities that were not explicit in prior versions of the regulations: post-irradiation examination of spent nuclear fuel; storage of irradiated nuclear materials; movement of irradiated nuclear materials; and processing of spent irradiated nuclear materials for disposal (e.g., processing for burial or vitrification). Multiple commenters maintained that these activities have no connection to the development or production of special nuclear material and pose an insignificant proliferation risk. They maintained DOE should not regulate these activities under part 810.

Separation and reprocessing of special nuclear material are back-end activities that have always been covered by part 810 but were not explicitly identified in the regulations. The NOPR proposed to specifically identify the back-end activities because they can be a part of a separation and reprocessing program. Today's SNOPR would make no change to the current status of back-end activities. Back-end activities related to special nuclear material reprocessing would continue to require specific authorization. Otherwise, back-end activities would not be subject to part 810.

8. NRC, Commerce, and State Approved Activities

Existing provisions of § 810.2 ''Scope'' exclude activities authorized by the NRC from the scope of part 810. Commenters recommended that the proposed regulations extend that exclusion to activities licensed by the Departments of Commerce and State, to avoid duplicative regulation. The rule proposed today adopts that recommendation. In cases where a request for an export license involves multiple agency jurisdictions, the responsible agencies would consult and determine which agency would exercise jurisdictional control over the application.

9. Medical Isotope Production

Various commenters said the proposed definition of ''reprocessing'' in the NOPR was too broad because it could have the unintended consequence of making medical isotope production subject to part 810. DOE considered the comments and has deleted the definition of reprocessing in today's SNOPR. The SNOPR adds a proposed exemption in § 810.2(c)(5) for the production or extraction of radiopharmaceutical isotopes when the process does not involve use of special nuclear material. Extraction of Molybdenum-99 from irradiated targets for medical use is proposed to be generally authorized in this SNOPR, in proposed § 810.6(g).

10. Activities Carried Out by IAEA Personnel

Some commenters criticized as unduly restrictive the NOPR's proposal to restrict the general authorization for IAEA activities to personnel ''whose employment is sponsored by the U.S. Government.'' The purpose of proposed § 810.6(e) is to enable full U.S. cooperation with IAEA personnel who are not citizens or nationals of generally authorized countries or with individuals working for the IAEA in specific authorization destinations. The IAEA therefore has been added to the list of generally authorized destinations in the proposed Appendix. The SNOPR proposes to generally authorize activities carried out by individuals who are full-time employees of the IAEA, or whose employment or work is sponsored or approved by the Department of State or Department of Energy. Under the SNOPR, engagement by IAEA employees in activities covered by proposed § 810.7 would still require specific authorization.

11. Transfer of Public Information and Research Results

Under the current rule, the transfer of ''public information'' is generally authorized. The NOPR proposed to exempt ''public information'' from the scope of part 810. Commenters did not object to that change. However, commenters claimed that DOE's application of the term ''public information'' had on occasion been unduly restrictive and burdensome. Multiple companies and industry groups commented that adoption of the NOPR's proposed definitions of ''technology'' and ''technical data'' would unduly restrict the information that could be transferred without a specific authorization. They also alleged inconsistencies in the way various types of information are defined in part 810 compared to other U.S. export control programs. Similarly, multiple academic institutions and organizations commented that the NOPR's definition of ''basic scientific research'' was too narrow and was inconsistent with Presidential Decision Directive 189 and the Department of Commerce controls that use the term ''fundamental research.''

DOE considered the comments and proposes today to replace the term ''public information'' with the terms ''publicly available information'' and ''publicly available technology,'' and to replace the term ''basic scientific research'' with ''fundamental research.'' The proposed definitions of these terms are intended to comport with usages in other export control programs, be consistent with regulatory exclusions in those programs, and generally to reduce the burden of regulatory compliance for industry and academic institutions.

12. Transfer of Sales, Marketing, and Sourcing Information

Multiple commenters observed that the distinction between publicly available information, which can be

disclosed or transferred without restriction, and technical information relating to proliferation-sensitive enrichment and reprocessing activities, which must always be specifically authorized, is not well delineated with respect to activities important to U.S. industry's competition for civil nuclear trade in global markets. Commenters noted that there is a body of proprietary information that U.S. nuclear energy companies need to share with foreign customers or vendors that is not useful to develop or produce special nuclear material. The commenters identified several types of reactor information transfers they believed should be generally authorized:

- *Commercial information*—(e.g., prices, warranties, and representations) is normally included in marketing proposals or bids. Such information is proprietary, but not technical.
- *General technical information*—(e.g., general design information, service offerings, and performance capabilities) is normally included in bids and proposals. The commenters stated that the information is not sufficiently detailed to assist in the production of SNM.
- *Sourcing requirements information*—(e.g., detailed component drawings and specifications) is normally provided to foreign vendors in order to permit them to bid for business from U.S. companies. The covered sourcing information would be for specific components and services to be used by customers of U.S. vendors, not for production of SNM outside the United States.
- *Due diligence information*—Commercial and financial information normally provided to a potential foreign investor fulfilling its legal due diligence obligation to owners.
- *Trade mission information*—Exchanges of general commercial and technical information with foreign entities in the course of government- or industry-sponsored events designed to promote international commerce.
- *Plant tour information*—Information obtained visually during U.S. facility visits by foreign business or government officials for commercial or regulatory purposes.

Commenters claimed that a general authorization for disclosure of these types of information is appropriate because it is not useful for the production of special nuclear material and is conveyed subject to agreements that place restrictions on the recipient's use. It is in the technology owner's interest to be sure the recipient only receives the information it needs to evaluate a proposed transaction and can only use the information for limited specified purposes. The commenters also were concerned that requiring a specific authorization for sales and sourcing activities would impose regulatory compliance costs and delays that could restrict U.S. company participation in growing global nuclear markets.

Commenters recommended that information conveyed for marketing and sourcing purposes be generally authorized if it is an established business practice for the information to be disclosed to support sales and sourcing programs, and if neither the export nor the re-export of the information would include detailed design, production, or manufacturing technology sufficient to permit the production of special nuclear material. They pointed to the License Exception ''TSU'' in the Department of Commerce's Export Administration Regulations, EAR section 740.13(b), and the Department of State's 2010 decision to drop prior International Traffic in Arms Regulations (ITAR) notice and approval requirements for certain proposals for military equipment (75 FR 52622) as reasonable approaches to this issue.

The Department recognizes that competition for nuclear business is fierce, and many foreign competitors of U.S. nuclear companies are state-sponsored enterprises, thus offering foreign customers and vendors attractive alternatives to U.S. companies as trading partners. Part 810 is meant to enable U.S. companies to compete effectively to garner sales, and secure components and services that may not be available in the United States. However, the purpose of part 810 is different from the purposes of the ITAR and EAR. Part 810 does not regulate marketing or sourcing activities as such, only the provision of assistance and the transfer of technology. Marketing or sourcing activities are regulated under this part or exempt based on the technical data transferred, not the use of the data. If controlled technical data is transferred in a bid, proposal, solicitation, trade show, or plant tour, the activity would be subject to part 810. If no technical data were transferred, the transaction would not be within the scope of part 810 as proposed in § 810.2. If a company was uncertain whether a transfer was exempt or requires authorization, it could contact DOE. Companies have sought and received guidance from DOE before investing marketing resources in order to determine that its services could be authorized if it won a contract. Accordingly, the SNOPR does not propose a blanket exemption for marketing and sourcing activities.

The benefit of a blanket general authorization would be limited for several reasons. First, most marketing and sourcing transfers are to generally authorized countries. Second, most proposals and marketing communications do not contain technical data that would enable the recipient to develop or produce special nuclear material. Third, under the current part 810 and the SNOPR, companies can request guidance or interpretations to inform their proposals and solicitations. In the absence of any information from interested parties quantifying expected sales and sourcing activity that would be burdened by a specific authorization requirement, there is no general authorization proposed today for this activity.

13. Transfer of ''Americanized'' Technology

Two commenters asserted that the purpose and intent of the NOPR's proposed definition of ''cooperative enrichment enterprise'' were unclear. They said that to build and operate their U.S. enrichment facility, it was necessary to ''Americanize'' foreign technology, adapting it to meet U.S. regulatory and industry standards. The Americanization process requires collaboration with foreign personnel. They acknowledged that the transfer of U.S. technology to a foreign recipient is subject to a specific authorization and U.S. consent rights, and did not object to the conditions imposed by proposed § 810.9(d). They were concerned, however, that proposed § 810.9(d) would unreasonably limit the foreign supplier from using or retransferring Americanized technology even when the retransfer was done in accordance with Nuclear Suppliers Group (NSG) guidelines.

Other commenters raised the same issue with respect to determining when any software commingling U.S. and foreign technology would be considered ''U.S.-based'' for export control purposes. They claimed uncertainty about ''contamination'' of foreign-origin technology with U.S. technology would discourage nuclear cooperation and incorporation of U.S. technology in foreign reactors. They recommended that DOE adopt a *de minimis* standard, exempting re-exports if the U.S. content is less than 25% of the total value of the software or technology.

The purpose of the proposed change regarding cooperative enrichment enterprises in the NOPR was to enable multinational entities to function effectively, while maintaining DOE

oversight and consistency with NSG guidelines. As proposed today, part 810 would not limit the ability of a cooperative enrichment enterprise that receives a specific authorization from using and retransferring foreign technology in accordance with the authorization. The proposed new rule should not affect cooperative enrichment enterprises either positively or negatively. Authorizations for cooperative enrichment enterprises and other technology transfers by collaborative enterprises would only be made on a case-by-case basis, considering all the relevant facts and circumstances relevant to proliferation. There may be circumstances when a transfer is *de minimis,* but the determination should be made on the case specific facts. A blanket exception based on an arbitrary monetary value would not be appropriate. No change to the proposal contained in the NOPR is warranted.

D. Explanation of Proposed Changes to Part 810 Terms

The existing regulation has 24 defined terms. The SNOPR proposes to add or substantially revise 22 terms, delete 2 terms, and leave 14 terms essentially unchanged, for a total of 36 defined terms in the proposed regulation.

The following terms would be added by the SNOPR to update the terms used in Part 810 to make them consistent with terms used in U.S. export control programs and NSG guidelines: Development, Cooperative enrichment enterprise, Enrichment, Fundamental research, Fissile material, Production, Technical assistance, Technical data, Technology, and Use. The following terms would be added or revised in line with the proposed changes in the approach to authorized destinations and authorized activities: Specific authorization, Production accelerator, Production accelerator-driven subcritical assembly system, Operational safety, General authorization, Production subcritical assembly, Publicly available information, Publicly available technology, and Foreign national. The term ''Country'' was proposed to be added to clarify that Taiwan would be covered under this proposed rule, consistent with section 4 of the Taiwan Relations Act, 22 U.S.C. § 3303, and the United States' one-China policy, under which the United States maintains unofficial relations with Taiwan. These terms were proposed to define administrative terms: Secretary, Country, and DOE. The following terms are proposed to be retained with no change except technical edits or format changes: Agreement for cooperation, Atomic Energy Act, IAEA, Sensitive nuclear technology, Source material, Special nuclear material, Person, Classified information, Nuclear reactor, NNPA, Production reactor, Restricted Data, NPT, and United States. The following terms would be deleted as obsolete or unused: Non-nuclear-weapon state and Open meeting.

V. Regulatory Review

A. Executive Order 12866

Today's proposed rule has been determined to be an economically significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget. The required economic impact analysis has been prepared by the Department of Energy. The analysis examined the size of the nuclear markets affected by the proposed changes and forecasted that the technology export markets that should be positively affected by the change in export destination classification are likely to be larger than those which could be adversely affected. The expected range of trade volume differences between the positively and adversely affected market segments is in the range of $32 million per year to $75 million per year over the period 2013 to 2030. In addition to this calculation, DOE presents in the economic impact analysis theoretical annualized costs and benefits at 3% and 7% discount rates based on one industry-generated forecast. It should be noted that the discounted numbers, approximately $23 million in costs and $43 million in benefits, reflect one hypothetical analysis that, as discussed in the economic analysis, is based on nuclear capacity forecasts. The analysis concluded that the greatest potential for impact resulting from the changes proposed in this rulemaking could occur in connection with transactions occurring in destinations that would be moved from general to specific authorization. Because significant trade can and does occur with countries for which specific authorization would be required, the actual impact would be much smaller than the total volume of trade. The actual effect of the change in annual U.S. technology export trade volumes is likely to be in the range of $5 to $50 million per year over this same period. The analysis also noted that it assumed that all destinations that are not on the Appendix's generally authorized list will remain off the list. It is likely, however, that some countries that are developing indigenous civil nuclear programs will enter into Agreements for Cooperation and would be added to the Appendix of generally authorized destinations, thereby obviating any impacts related to the specific authorization process. The analysis is publicly available at the DOE Web site *http://nnsa.energy.gov/nonproliferation/nis/10CFRPart810,* the Department of Commerce Web site *http://www.trade.gov/mas/ian/industryregulationmasinput/index.asp* and at *http://www.regulations.gov/#!docketDetail;D=DOE-HQ-2011-0035* under ''Assistance to Foreign Atomic Energy Activities''.

B. National Environmental Policy Act

DOE determined that today's SNOPR is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A5 of Appendix A to Subpart D, 10 CFR part 1021, categorical exclusion A5, which applies to a rule or regulation that interprets or amends an ''existing rule or regulation that does not change the environmental effect of the rule or regulation being amended.'' Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://www.gc.doe.gov.*

Today's proposed changes to part 810 are summarized in Section II of the Preamble. DOE has reviewed the changes under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed changes clarify the authorization requirements pertaining to the provision of assistance to foreign atomic energy

activities and make changes in response to the comments received in response to the NOPR. They do not expand the scope of activities currently regulated under 10 CFR part 810.

The requirements for small businesses exporting nuclear technology abroad would not substantively change because the proposed revisions to this rule do not add new burdens or duties to small businesses. The obligations of any person subject to the jurisdiction of the United States who engages directly or indirectly in the production of special nuclear material outside the United States have not changed in a manner that would provide any impact on small businesses. Furthermore, DOE has conducted a review of the potential small businesses that may be impacted by this proposed rule. This review consisted of an analysis of the number of businesses impacted generally since 2007–2008, and a determination of which of those are considered ''small businesses'' by the Small Business Administration. Out of 56 businesses impacted by part 810, only 5 qualify as small businesses. The number of requests for authorization or reports of generally authorized activities from each small business on average was one or less per year, while the larger businesses can have as many as 100 requests for authorization or reports of generally authorized activities per year. The small businesses fall within two North American Industry Classification System codes, for engineering services and computer systems designs services. Often, their requests for authorization include the transfer of computer codes or other similar products. The proposed changes to this rule would not alter what these businesses need to do to receive a part 810 authorization. So, there would be no impact on their ability to move forward and conduct business in the same manner they have previously, except that the changes might make it easier by clarifying some terms used to define regulated activities. Generally speaking, small businesses reported that their initial filing of a part 810 request for authorization required up to 40 hours of legal assistance, but follow-on reporting and requests required significantly less assistance.

On the basis of the foregoing, DOE certifies the SNOPR would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Paperwork Reduction Act

The collection of information under this supplemental proposed rule was previously approved under Office of Management and Budget Control Number 1901–0263.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments (2 U.S.C. 1534).

This supplemental proposed rule would not impose a Federal mandate on State, local, or tribal governments or on the private sector. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. The supplemental proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this supplemental proposed rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the

supplemental proposed rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's supplemental proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Executive Order 13609

Executive Order 13609 of May 1, 2012, ''Promoting International Regulatory Cooperation,'' requires that, to the extent permitted by law and consistent with the principles and requirements of Executive Order 13563 and Executive Order 12866, each Federal agency shall:

(a) If required to submit a Regulatory Plan pursuant to Executive Order 12866, include in that plan a summary of its international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations, with an explanation of how these activities advance the purposes of Executive Order 13563 and this order;

(b) Ensure that significant regulations that the agency identifies as having significant international impacts are designated as such in the Unified Agenda of Federal Regulatory and Deregulatory Actions, on RegInfo.gov, and on Regulations.gov;

(c) In selecting which regulations to include in its retrospective review plan, as required by Executive Order 13563, consider:

(i) Reforms to existing significant regulations that address unnecessary differences in regulatory requirements between the United States and its major trading partners, consistent with section 1 of this order, when stakeholders provide adequate information to the agency establishing that the differences are unnecessary; and

(ii) Such reforms in other circumstances as the agency deems appropriate; and

(d) For significant regulations that the agency identifies as having significant international impacts, consider, to the extent feasible, appropriate, and consistent with law, any regulatory approaches by a foreign government that the United States has agreed to consider under a regulatory cooperation council work plan.

DOE has reviewed this supplemental proposed rule under the provisions of Executive Order 13609 and determined that the rule complies with all requirements set forth in the order.

VI. Approval by the Office of the Secretary

The Office of the Secretary of Energy has approved the publication of today's supplemental proposed rule.

List of Subjects in 10 CFR Part 810

Foreign relations, Nuclear energy, Reporting and recordkeeping requirements.

Issued in Washington, DC, on July 30, 2013.

Ernest J. Moniz,

Secretary of Energy.

For the reasons stated in the preamble, DOE proposes to amend title 10 of the Code of Federal Regulations by revising part 810 to read as follows:

PART 810—ASSISTANCE TO FOREIGN ATOMIC ENERGY ACTIVITIES

Sec.

Authority: Secs. 57, 127, 128, 129, 161, and 223, Atomic Energy Act of 1954, as amended by the Nuclear Nonproliferation Act of 1978, Pub. L. 95–242, 68 Stat. 932, 948, 950, 958, 92 Stat. 126, 136, 137, 138 (42 U.S.C. 2077, 2156, 2157, 2158, 2201, 2273), and the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108–458, 118 Stat. 3768; Sec. 104 of the Energy Reorganization Act of 1974, Pub. L. 93–438; Sec. 301, Department of Energy Organization Act, Pub. L. 95–91; National Nuclear Security Administration Act, Pub. L. 106–65, 50 U.S.C. 2401 *et seq.,* as amended.

§ 810.1 Purpose.

The regulations in this part implement section 57 b.(2) of the Atomic Energy Act, which empowers the Secretary, with the concurrence of the Department of State, and after consultation with the Nuclear Regulatory Commission, the Department of Commerce, and the Department of Defense, to authorize persons to directly or indirectly engage or participate in the development or production of special nuclear material outside the United States. The purpose of the regulations in this part is to:

(a) Identify activities that are generally authorized by the Secretary and thus require no other authorization under this part;

(b) Identify activities that require specific authorization by the Secretary and explain how to request authorization; and

(c) Specify reporting requirements for authorized activities.

§ 810.2 Scope.

(a) Part 810 (this part) applies to:

(1) All persons subject to the jurisdiction of the United States who directly or indirectly engage or participate in the development or

production of any special nuclear material outside the United States; and

(2) The transfer of technology that involves any of the activities listed in paragraph (b) of this section either in the United States or abroad by such persons or by licensees, contractors or subsidiaries under their direction, supervision, responsibility, or control.

(b) The activities referred to in paragraph (a) of this section are:

(1) Chemical conversion and purification of uranium and thorium from milling plant concentrates and in all subsequent steps in the nuclear fuel cycle;

(2) Chemical conversion and purification of plutonium and neptunium;

(3) Nuclear fuel fabrication, including preparation of fuel elements, fuel assemblies and cladding thereof;

(4) Uranium isotope separation (uranium enrichment), plutonium isotope separation, and isotope separation of any other elements (including stable isotope separation) when the technology or process can be applied directly or indirectly to uranium or plutonium;

(5) Nuclear reactor development, production or use of the components within or attached directly to the reactor vessel, the equipment that controls the level of power in the core, and the equipment or components that normally contain or come in direct contact with or control the primary coolant of the reactor core;

(6) Development, production or use of production accelerator-driven subcritical assembly systems;

(7) Heavy water production and hydrogen isotope separation when the technology or process has reasonable potential for large-scale separation of deuterium (^{2}H) from protium (^{1}H);

(8) Reprocessing of irradiated nuclear fuel or targets containing special nuclear material, and post-irradiation examination of fuel elements, fuel assemblies and cladding thereof, if it is part of a reprocessing program; and

(9) The transfer of technology for the development, production, or use of equipment or material especially designed or prepared for any of the above listed activities. (*See* Nuclear Regulatory Commission regulations at 10 CFR part 110, Appendices A through K, and O, for an illustrative list of items considered to be especially designed or prepared for certain listed nuclear activities.)

(c) This part does not apply to:

(1) Exports authorized by the Nuclear Regulatory Commission, Department of State, or Department of Commerce;

(2) Transfer of publicly available information, publicly available technology, or the results of fundamental research;

(3) Uranium and thorium mining and milling (*e.g.,* production of impure source material concentrates such as uranium yellowcake and all activities prior to that production step);

(4) Nuclear fusion reactors per se, except for supporting systems involving hydrogen isotope separation technologies within the scope defined in paragraph (b)(7) of this section and § 810.7(b)(3);

(5) Production or extraction of radiopharmaceutical isotopes when the process does not involve special nuclear material; and

(6) Transfer of technology to any individual who is lawfully admitted for permanent residence in the United States or is a protected individual under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)).

(d) Persons under U.S. jurisdiction are responsible for their foreign licensees, contractors, or subsidiaries to the extent that the former have control over the activities of the latter.

§ 810.3 Definitions.

As used in this part 810:

Agreement for cooperation means an agreement with another nation or group of nations concluded under sections 123 or 124 of the Atomic Energy Act.

Atomic Energy Act means the Atomic Energy Act of 1954, as amended.

Classified information means national security information classified under Executive Order 13526 or any predecessor or superseding order, and Restricted Data classified under the Atomic Energy Act.

Cooperative enrichment enterprise means a multi-country or multi-company (where at least two of the companies are incorporated in different countries) joint development or production effort. The term includes a consortium of countries or companies or a multi-national corporation.

Country, as well as government, nation, state, and all related terms, shall be read to include Taiwan, consistent with section 4 of the Taiwan Relations Act, 22 U.S.C. 3303, and the United States' one-China policy, under which the United States maintains unofficial relations with Taiwan.

Development means any activity related to all phases before production such as: design, design research, design analysis, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, and layouts.

DOE means the U.S. Department of Energy.

Enrichment means isotope separation of uranium or isotope separation of plutonium, regardless of the type of process or separation mechanism used.

Fissile material means isotopes that readily fission after absorbing a neutron of any energy, either fast or slow. Fissile materials are uranium-235, uranium-233, plutonium-239, and plutonium-241.

Foreign national means an individual who is not a citizen or national of the United States, but excludes U.S. lawful permanent residents and protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)).

Fundamental research means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.

General authorization means an authorization granted by the Secretary under section 57 b.(2) of the Atomic Energy Act to provide assistance or technology to foreign atomic energy activities subject to this part and which does not require a request for, or the Secretary's issuance of, a specific authorization.

IAEA means the International Atomic Energy Agency.

NNPA means the Nuclear Nonproliferation Act of 1978, Public Law 95–242, 22 U.S.C. 3201 *et seq.*

NPT means the Treaty on the Nonproliferation of Nuclear Weapons, done on July 1, 1968.

Nuclear reactor means an apparatus, other than a nuclear explosive device, designed or used to sustain nuclear fission in a self-sustaining chain reaction.

Operational safety means the capability of a reactor to be operated in a manner that complies with national standards or requirements or widely-accepted international standards and recommendations to prevent uncontrolled or inadvertent criticality, prevent or mitigate uncontrolled release of radioactivity to the environment, monitor and limit staff exposure to radiation and radioactivity, and protect off-site population from exposure to radiation or radioactivity. Operational safety may be enhanced by providing expert advice, equipment,

instrumentation, technology, software, services, analyses, procedures, training, or other assistance that improves the capability of the reactor to be operated in compliance with such standards, requirements or recommendations.

Person means:

(1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution,

(2) Any group, government agency other than DOE, or any State or political entity within a State; and

(3) Any legal successor, representative, agent, or agency of the foregoing.

Production means all production phases such as: construction, production engineering, manufacture, integration, assembly or mounting, inspection, testing, and quality assurance.

Production accelerator means a particle accelerator especially designed, used, or intended for use with a production subcritical assembly.

Production accelerator-driven subcritical assembly system means a system comprised of a production subcritical assembly and a production accelerator and which is especially designed, used, or intended for the production of plutonium or uranium-233. In such a system, the production accelerator target provides a source of neutrons used to effect special nuclear material production in the production subcritical assembly.

Production reactor means a nuclear reactor especially designed or used primarily for the production of plutonium or uranium-233.

Production subcritical assembly means an apparatus that contains source material or special nuclear material to produce a nuclear fission chain reaction that is not self-sustaining and that is especially designed, used, or intended for the production of plutonium or uranium-233.

Publicly available information means information in any form that is generally accessible, without restriction, to the public.

Publicly available technology means technology that is already published or has been prepared for publication; arises during, or results from, fundamental research; or is included in an application filed with the U.S. Patent Office and eligible for foreign filing under 35 U.S.C. 184.

Restricted Data means all data concerning:

(1) Design, manufacture, or utilization of atomic weapons;

(2) The production of special nuclear material; or

(3) The use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act.

Secretary means the Secretary of Energy.

Sensitive nuclear technology means any information (including information incorporated in a production or utilization facility or important component part thereof) which is not available to the public (see definition of ''publicly available information'') and which is important to the design, construction, fabrication, operation, or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water, but shall not include Restricted Data controlled pursuant to chapter 12 of the Atomic Energy Act. The information may take a tangible form such as a model, prototype, blueprint, or operation manual or an intangible form such as technical services.

Source material means:

(1) Uranium or thorium, other than special nuclear material; or

(2) Ores that contain by weight 0.05 percent or more of uranium or thorium, or any combination of these materials.

Special nuclear material means:

(1) Plutonium,

(2) Uranium-233, or

(3) Uranium enriched above 0.711 percent by weight in the isotope uranium-235.

Specific authorization means an authorization granted by the Secretary under section 57 b.(2) of the Atomic Energy Act, in response to an application filed under this part, to engage in specifically authorized nuclear activities subject to this part.

Technical assistance means assistance in such forms as instruction, skills, training, working knowledge, consulting services, or any other assistance as determined by the Secretary. Technical assistance may involve the transfer of technical data.

Technical data means data in such forms as blueprints, plans, diagrams, models, formulae, engineering designs, specifications, manuals, and instructions written or recorded on other media or devices such as disks, tapes, read-only memories, and computational methodologies, algorithms, and computer codes that can directly or indirectly affect the production of special nuclear material.

Technology means technical assistance or technical data required for the development, production or use of any plant, facility, or especially designed or prepared equipment for the activities described in § 810.2(b).

Use means operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing.

United States, when used in a geographical sense, includes Puerto Rico and all territories and possessions of the United States.

§ 810.4 Communications.

(a) All communications concerning the regulations in this part should be addressed to: U.S. Department of Energy, Washington, DC 20585. Attention: Senior Policy Advisor, National Nuclear Security Administration/Office of Nonproliferation and International Security (NA–24), Telephone (202) 586–7924.

(b) Communications also may be delivered to DOE's headquarters at 1000 Independence Avenue SW., Washington, DC 20585. All clearly marked proprietary information will be given the maximum protection allowed by law.

§ 810.5 Interpretations.

(a) The advice of the DOE Office of Nonproliferation and International Security may be requested on whether a proposed activity falls outside the scope of this part, is generally authorized under § 810.6, or requires a specific authorization under § 810.7. However, unless authorized by the Secretary in writing, no interpretation of the regulations in this part other than a written interpretation by the DOE General Counsel is binding upon DOE.

(b) When advice is requested from the DOE Office of Nonproliferation and International Security, or a binding, written determination is requested from the DOE General Counsel, a response normally will be made within 30 calendar days and, if this is not feasible, an interim response will explain the reason for the delay.

(c) The DOE Office of Nonproliferation and International Security may periodically publish abstracts of general or specific authorizations that may be of general interest, exclusive of proprietary business-confidential data submitted to DOE or other information protected by law from unauthorized disclosure.

§ 810.6 Generally authorized activities.

The Secretary has determined that the following activities are generally authorized, provided that no sensitive nuclear technology or assistance described in § 810.7 is involved:

(a) Engaging directly or indirectly in the production of special nuclear

material at facilities in countries or with entities listed in the Appendix to this part;

(b) Transfer of technology to a citizen or national of a country not listed in the Appendix to this part and working at an NRC-licensed facility, provided:

(1) The foreign national is lawfully employed by or contracted to work for a U.S. employer in the United States;

(2) The foreign national executes a confidentiality agreement with the U.S. employer to safeguard the technology from unauthorized use or disclosure;

(3) The foreign national has been granted unescorted access in accordance with NRC regulations at an NRC-licensed facility; and

(4) The foreign national's U.S. employer authorizing access to the technology complies with the reporting requirements in § 810.12(g).

(c) Activities at any safeguarded facility to:

(1) Prevent or correct a current or imminent radiological emergency posing a significant danger to the health and safety of the off-site population, which emergency cannot be met by other means, provided DOE is notified in writing in advance and does not object within 48 hours of receipt of the advance notification;

(2) Furnish operational safety information or assistance to existing safeguarded civilian nuclear reactors outside the United States in countries with safeguards agreements with the IAEA or an equivalent voluntary offer, provided DOE is notified in writing and approves the activity in writing within45 calendar days of the notice. The applicant should provide all the information required under § 810.11 and specific references to the national or international safety standards or requirements for operational safety for nuclear reactors that will be addressed by the assistance, and may provide information cited in § 810.11(b); or

(3) Furnish operational safety information or assistance to existing, proposed, or new-build civilian nuclear power plants in the United States, provided DOE is notified by certified mail return receipt requested and approves the activity in writing within45 calendar days of the notice. The applicant should provide all the information required under § 810.11.

(d) Participation in exchange programs approved by the Department of State in consultation with DOE;

(e) Activities carried out in the course of implementation of the ''Agreement between the United States of America and the [IAEA] for the Application of Safeguards in the United States,'' done on December 9, 1980;

(f) Activities carried out by persons who are full-time employees of the IAEA or whose employment by or work for the IAEA is sponsored or approved by the Department of State or DOE; and

(g) Extraction of Molybdenum-99 for medical use from irradiated targets of enriched uranium, provided that the activity does not also involve purification and recovery of enriched uranium materials, and provided further, that the technology used does not involve significant components relevant for reprocessing spent nuclear reactor fuel (e.g., high-speed centrifugal contactors, pulsed columns).

§ 810.7 Activities requiring specific authorization.

Unless generally authorized by § 810.6, any person requires a specific authorization by the Secretary before:

(a) Engaging in any of the activities listed in § 810.2(b), with any foreign country or entity not specified in the Appendix to this part;

(b) Providing or transferring sensitive nuclear technology to any foreign country; or

(c) Engaging in or providing technology (including technical assistance) for any of the following activities with respect to any foreign country (or a citizen or national of that country other than U.S. lawful permanent residents or protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)):

(1) Uranium isotope separation (uranium enrichment), plutonium isotope separation, or isotope separation of any other elements (including stable isotope separation) when the technology or process can be applied directly or indirectly to uranium or plutonium;

(2) Fabrication of nuclear fuel containing plutonium, including preparation of fuel elements, fuel assemblies, and cladding thereof;

(3) Heavy water production, and hydrogen isotope separation, when the technology or process has reasonable potential for large-scale separation of deuterium (^{2}H) from protium (^{1}H);

(4) Development, production or use of a production accelerator-driven subcritical assembly system;

(5) Development, production or use of a production reactor; or

(6) Reprocessing of irradiated nuclear fuel or targets containing special nuclear material.

§ 810.8 Restrictions on general and specific authorization.

A general or specific authorization granted by the Secretary under this part:

(a) Is limited to activities involving only unclassified information and does not permit furnishing classified information;

(b) Does not relieve a person from complying with the relevant laws or the regulations of other U.S. Government agencies applicable to exports; and

(c) Does not authorize a person to engage in any activity when the person knows or has reason to know that the activity is intended to provide assistance in designing, developing, fabricating, or testing a nuclear explosive device.

§ 810.9 Grant of specific authorization.

(a) An application for authorization to engage in activities for which specific authorization is required under § 810.7 should be made to the U.S. Department of Energy, National Nuclear Security Administration, Washington, DC 20585, Attention: Senior Policy Advisor, Office of Nonproliferation and International Security (NA–24).

(b) The Secretary will approve an application for specific authorization if it is determined, with the concurrence of the Department of State and after consultation with the Nuclear Regulatory Commission, Department of Commerce, and Department of Defense, that the activity will not be inimical to the interest of the United States. In making such a determination, the Secretary will take into account the following factors:

(1) Whether the United States has an agreement for cooperation in force covering exports to the country or entity involved;

(2) Whether the country is a party to, or has otherwise adhered to, the NPT;

(3) Whether the country is in good standing with its acknowledged nonproliferation commitments;

(4) Whether the recipient country is in full compliance with its obligations under the NPT;

(5) Whether the country has accepted IAEA safeguards obligations on all nuclear materials used for peaceful purposes and has them in force;

(6) Whether other nonproliferation controls or conditions exist on the proposed activity, including that the recipient is duly authorized by the country to receive and use the technology sought to be transferred;

(7) Significance of the assistance or transferred technology relative to the existing nuclear capabilities of the recipient country;

(8) Whether the transferred technology is part of an existing cooperative enrichment enterprise or the supply chain of such an enterprise;

(9) The availability of comparable assistance or technology from other sources; and

(10) Any other factors that may bear upon the political, economic, competitiveness, or security interests of the United States, including the obligations of the United States under treaties or other international agreements, and the obligations of the recipient country under treaties or other international agreements.

(c) If the proposed activity involves the export of sensitive nuclear technology, the requirements of sections 127 and 128 of the Atomic Energy Act and of any applicable United States international commitments must also be met. For the export of sensitive nuclear technology, in addition to the factors in paragraph (b) of this section, the Secretary will take into account:

(1) Whether the recipient country has signed, ratified, and is implementing a comprehensive safeguards agreement with the IAEA and has in force an Additional Protocol based on the model Additional Protocol, or, pending this, in the case of a regional accounting and control arrangement for nuclear materials, is implementing, in cooperation with the IAEA, a safeguards agreement approved by the IAEA Board of Governors prior to the publication of INFCIRC/540 (September 1997); or alternatively whether comprehensive safeguards, including the measures of the Model Additional Protocol, are being applied in the recipient country;

(2) Whether the recipient country has not been identified in a report by the IAEA Secretariat that is under consideration by the IAEA Board of Governors, as being in breach of obligations to comply with the applicable safeguards agreement, nor continues to be the subject of Board of Governors decisions calling upon it to take additional steps to comply with its safeguards obligations or to build confidence in the peaceful nature of its nuclear program, nor as to which the IAEA Secretariat has reported that it is unable to implement the applicable safeguards agreement. This criterion would not apply in cases where the IAEA Board of Governors or the United Nations Security Council subsequently decides that adequate assurances exist as to the peaceful purposes of the recipient's nuclear program and its compliance with the applicable safeguards agreements. For the purposes of this paragraph, ''breach'' refers only to serious breaches of proliferation concern;

(3) Whether the recipient country is adhering to the Nuclear Suppliers Group Guidelines and, where applicable, has reported to the Security Council of the United Nations that it is implementing effective export controls as identified by Security Council Resolution 1540; and

(4) Whether the recipient country adheres to international safety conventions relating to nuclear or other radioactive materials or facilities.

(d) Unless otherwise prohibited by U.S. law, the Secretary may grant an application for specific authorization for activities related to the enrichment of source material and special nuclear material, provided that:

(1) The U.S. Government has received written nonproliferation assurances from the government of the country;

(2) That it/they accept(s) the sensitive enrichment equipment and enabling technologies or an operable enrichment facility under conditions that do not permit or enable unauthorized replication of the facilities;

(3) That the subject enrichment activity will not result in the production of uranium enriched to greater than 20% in the isotope uranium-235; and

(4) That there are in place appropriate security arrangements to protect the activity from use or transfer inconsistent with the country's national laws.

(e) Approximately 30 calendar days after the Secretary's grant of a specific authorization, a copy of the Secretary's determination may be provided to any person requesting it at the Department's Public Reading Room, unless the applicant submits information demonstrating that public disclosure will cause substantial harm to its competitive position. This provision does not affect any other authority provided by law for the non-disclosure of information.

§ 810.10 Revocation, suspension, or modification of authorization.

The Secretary may revoke, suspend, or modify a general or specific authorization:

(a) For any material false statement in an application for specific authorization or in any additional information submitted in its support;

(b) For failing to provide a report or for any material false statement in a report submitted pursuant to § 810.12;

(c) If any authorization governed by this part is subsequently determined by the Secretary to be inimical to the interest of the United States or otherwise no longer meets the legal criteria for approval; or

(d) Pursuant to section 129 of the Atomic Energy Act.

§ 810.11 Information required in an application for specific authorization.

(a) An application letter must include the following information:

(1) The name, address, and citizenship of the applicant, and complete disclosure of all real parties in interest; if the applicant is a corporation or other legal entity; where it is incorporated or organized; the location of its principal office; and the degree of any control or ownership by any foreign individual, corporation, partnership, firm, association, trust, estate, public or private institution or government agency;

(2) The country or entity to receive the assistance or technology; the name and location of any facility or project involved; and the name and address of the person for which or whom the activity is to be performed;

(3) A description of the assistance or technology to be provided, including a complete description of the proposed activity, its approximate monetary value, and a detailed description of any specific project to which the activity relates; and

(4) The designation of any information that if publicly disclosed would cause substantial harm to the competitive position of the applicant.

(b) The applicant should also include, as an attachment to the application letter, any information the applicant wishes to provide concerning the factors listed in § 810.9(b) and (c).

(c) Except as provided in § 810.6(b), an applicant seeking to employ a citizen or national of a country not listed in the Appendix in a position that could result in the transfer of technology subject to § 810.2, or seeking to employ any foreign national in the United States or in a foreign country that could result in the export of assistance or transfer of technology subject to § 810.7, must request a specific authorization for the employment. The applicant must provide, with respect to each foreign national to whom access to technology will be granted, the following:

(1) A description of the technology that would be made available to the foreign national;

(2) The purpose of the proposed transfer, a description of the applicant's technology control program, and the Nuclear Regulatory Commission standards applicable to the employer's grant of access to the technology;

(3) A copy of any confidentiality agreement between the applicant and the foreign national as required by § 810.6(b)(2);

(4) Background information about the foreign national, including the individual's citizenship, all countries where the individual has resided for more than six months, the training or educational background of the individual, all work experience, any other known affiliations with persons engaged in activities subject to this part,

and current immigration or visa status in the United States; and

(5) A statement signed by the foreign national that he/she will comply with the regulations under this part; will not disclose the applicant's technology without DOE's prior written authorization; and will not, at any time during or after his/her employment with the applicant, use the applicant's technology for any nuclear explosive device, for research on or development of any nuclear explosive device, or in furtherance of any military purpose.

(d) An applicant for a specific authorization related to the enrichment of fissile material must submit information that demonstrates that the proposed transfer will avoid, so far as practicable, the transfer of enabling design or manufacturing technology associated with such items; and that the applicant will share with the recipient only information required for the regulatory purposes of the recipient country or to ensure the safe installation and operation of a resulting enrichment facility, without divulging enabling technology.

§ 810.12 Reports.

(a) Each person who has received a specific authorization shall, within 30 calendar days after beginning the authorized activity, provide to DOE a written report containing the following information:

(1) The name, address, and citizenship of the person submitting the report;

(2) The name, address, and citizenship of the person for whom or which the activity is being performed;

(3) A description of the activity, the date it began, its location, status, and anticipated date of completion; and

(4) A copy of the DOE letter authorizing the activity.

(b) Each person carrying out a specifically authorized activity shall inform DOE, in writing within 30 calendar days, of completion of the activity or of its termination before completion.

(c) Each person granted a specific authorization shall inform DOE, in writing within 30 calendar days, when it is known that the proposed activity will not be undertaken and the granted authorization will not be used.

(d) DOE may require reports to include such additional information that may be required by applicable U.S. law, regulation, or policy with respect to the specific nuclear activity or country for which specific authorization is required.

(e) Each person, within 30 calendar days after beginning any generally authorized activity under § 810.6, shall provide to DOE:

(1) The name, address, and citizenship of the person submitting the report;

(2) The name, address, and citizenship of the person for whom or which the activity is being performed;

(3) A description of the activity, the date it began, its location, status, and anticipated date of completion; and

(4) A written assurance that the applicant has an agreement with the recipient ensuring that any subsequent transfer of materials, equipment, or technology transferred under general authorization under circumstances in which the conditions in § 810.6 would not be met will take place only if the applicant obtains DOE's prior written approval.

(f) Individuals engaging in generally authorized activities as employees of persons required to report are not themselves required to submit the reports described in paragraph (e) of this section.

(g) Persons engaging in generally authorized activities under § 810.6(b) are required to notify the Department that a citizen or national of a country not listed in the Appendix to this part has been granted access to information subject to § 810.2 in accordance with Nuclear Regulatory Commission access requirements. The report should contain the information required in § 810.11(b).

(h) All reports should be sent to: U.S. Department of Energy, National Nuclear Security Administration, Washington, DC 20585, Attention: Senior Policy Advisor, Office of Nonproliferation and International Security (NA–24).

§ 810.13 Additional information.

DOE may at any time require a person engaging in any generally or specifically authorized activity to submit additional information.

§ 810.14 Violations.

(a) The Atomic Energy Act provides that:

(1) Permanent or temporary injunctions or restraining orders may be granted to prevent any person from violating any provision of the Atomic Energy Act or its implementing regulations.

(2) Any person convicted of violating or conspiring or attempting to violate any provision of section 57 of the Atomic Energy Act may be fined up to $10,000 or imprisoned up to 10 years, or both. If the offense is committed with intent to injure the United States or to aid any foreign nation, the penalty could be up to life imprisonment and a $20,000 fine, or both.

(b) Title 18 of the United States Code, section 1001, provides that persons convicted of willfully falsifying, concealing, or covering up a material fact or making false, fictitious or fraudulent statements or representations may be fined up to $10,000 or imprisoned up to five years, or both.

§ 810.15 Effective date and savings clause.

Except for actions that may be taken by DOE pursuant to § 810.10, the regulations in this part do not affect the validity or terms of any specific authorizations granted under regulations in effect before [*date 30 days after date of publication of final rule*] or generally authorized activities under those regulations for which the contracts, purchase orders, or licensing arrangements were already in effect. Persons engaging in activities that were generally authorized under regulations in effect before [*date 30 days after date of publication of final rule*], but that require specific authorization under the regulations in this part, must request specific authorization by [*date 90 days after date of publication of final rule*] and may continue their activities until DOE acts on the request.

Appendix A to Part 810—Generally Authorized Destinations

Argentina
Australia
Austria
Belgium
Brazil
Bulgaria
Canada
Chile (For all activities related to INFCIRC/834 only)
Colombia
Cyprus
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Hungary
Indonesia
International Atomic Energy Agency
Ireland
Italy
Japan
Kazakhstan
Korea, Republic of
Latvia
Lithuania
Luxembourg
Malta
Mexico (For all activities related to INFCIRC/203 Parts 1 and 2 and INFCIRC/825 only)
Morocco
Netherlands
Norway
Poland
Portugal
Romania

Slovakia
Slovenia
South Africa
Spain
Sweden
Switzerland
Taiwan
Thailand
Turkey
Ukraine
United Arab Emirates
United Kingdom
[FR Doc. 2013–18691 Filed 8–1–13; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 741 and 748

RIN 3313–AE25

Filing Financial and Other Reports

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) proposes to amend its regulations regarding filing financial, statistical, and other reports and credit union profiles by requiring all federally-insured credit unions (FICU) to file this information electronically using NCUA's information management system or other electronic means specified by NCUA. Under the current rule, FICUs are required to file this information online only if they have the capacity to do so.

DATES: NCUA is issuing this proposal with a 30-day comment period instead of its typical 60-day time frame. NCUA believes the proposal is simple, and 30 days is sufficient for the public to digest and comment on the proposal. Comments must be received on or before September 3, 2013.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *Email:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Notice of Proposed Rulemaking for Parts 741 and 748, Filing financial and other reports'' in the email subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: You may view all public comments on NCUA's Web site at *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx* as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an email to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Associate General Counsel or Sarah Chung, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–1178 or Mark Vaughan, Director, Division of Analytics and Surveillance, Office of Examination and Insurance, at the above address or telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION:

I. Background

A. What are the current requirements for filing reports?

The Federal Credit Union Act (Act) provides NCUA with broad authority to require FICUs, including corporate credit unions, to submit financial data and other information as required by the Board.[1] The Act directs each FICU to make reports of condition to the Board on dates selected by the Board.[2] The Board has broad discretion to set the conditions and information requirements for such reports.[3] More specifically, NCUA requires FICUs to submit financial reports, reports of officials, credit union profiles, and other reports.[4]

Section 741.6(a) of NCUA's regulations requires FICUs to file financial, statistical, and other reports, including call reports. Section 748.1 of NCUA's regulations requires the president or managing official of each FICU to certify compliance with a variety of requirements in its credit union profile.

Under NCUA's current regulations, a FICU must use NCUA's information management system, or other electronic means specified by NCUA, to submit its reportable data online, unless it is unable to do so.[5] In this case, a FICU must file written reports in accordance with NCUA instructions.

B. How many FICUs file manually?

As of March 31, 2013, 59 of 6,753 FICUs filed manually. The largest of these credit unions had $21 million in assets, and 45 of them had fewer than $2 million in assets. The overwhelming majority of these manual filers are federal credit unions. Approximately one quarter of manual filers report having email and internet access and appear to have the capacity to file reports and profiles electronically. NCUA recently completed an initiative to provide free laptops and technical assistance to manual filers. This initiative helped some FICUs transition to online filing.

II. Summary of the Proposed Rule

A. Why is NCUA proposing this rule?

Executive Order 13579 provides that independent agencies, including NCUA, should consider if they can modify, streamline, expand, or repeal existing rules to make their programs more effective and less burdensome. NCUA seeks to reduce operating costs and promote environmentally responsible practices. NCUA estimates it costs the agency $125 per filer per quarter to process manual filings of call reports alone. NCUA proposes to require all FICUs to submit call reports and other data and to update their credit union profiles online to reduce the expense of printing and mailing paper forms and other processing costs. Filing manually will no longer be an option.

Additionally, NCUA intends to increase efficiency, enhance accuracy of data, and provide a secure access portal that is the sole means for FICUs to submit, edit, and view data NCUA collects. Online reporting is more efficient and cost effective and enhances the accuracy of credit union data. In addition, it permits FICUs to submit data securely to NCUA from any computer with internet access. This system eliminates mailing and printing delays and missing information, and provides real-time warnings throughout the input process to ensure data integrity.

[1] 12 U.S.C. 1756, 1766, 1781, and 1782.
[2] *Id.*
[3] *Id.*
[4] 12 CFR 741.6 and 748.1.
[5] *Id.* Currently, corporate credit unions use an electronic system for submitting data online different from the system used by natural person FICUs.

B. Does the proposed rule create any new burdens for FICUs?

NCUA believes that once manual filers embrace online filing, they will find it is quicker and easier than their current practices, and it will reduce their administrative burden. The proposal does not create any new regulatory burdens for FICUs, and NCUA expects that electronic filing of reports and profiles will improve a FICU's efficiency and reduce delays.

To assist FICUs making this transition, NCUA already provides instructions on how to report online and has posted a ''frequently asked questions'' section on NCUA's Web site.

III. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.[6] For purposes of this analysis, NCUA considers small credit unions to be those having under $50 million in assets.[7] This rule would affect relatively few FICUs and the associated cost is minimal. Accordingly, NCUA certifies the rule will not have a significant economic impact on small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.[8] For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. This proposed rule requires the same information previously required in a different format, which NCUA believes should require the same or less amount of time to produce. This proposed rule will not create new paperwork burdens or modify any existing paperwork burdens.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined this rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects

12 CFR Part 741

Credit, Credit unions, Reporting and recordkeeping requirements, Share insurance.

12 CFR Part 748

Credit unions, Reporting and recordkeeping requirements, Security measures.

By the National Credit Union Administration Board on July 25, 2013.

Mary F. Rupp,

Secretary of the Board.

For the reasons stated above, NCUA proposes to amend 12 CFR parts 741 and 748 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

■ 1. The authority for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 2. In § 741.6, revise paragraph (a) to read as follows:

§ 741.6 Financial and statistical and other reports.

(a) Upon written notice from the Board, Regional Director, Director of the Office of Examination and Insurance, or Director of the Office of National Examinations and Supervision, insured credit unions must file financial and other reports in accordance with the instructions in the notice. Insured credit unions must use NCUA's information management system, or other electronic means specified by NCUA, to submit their data online.

* * * * *

PART 748—SECURITY PROGRAM, REPORT OF SUSPECTED CRIMES, SUSPICIOUS TRANSACTIONS, CATASTROPHIC ACTS AND BANK SECRECY ACT COMPLIANCE

■ 3. The authority for part 748 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(q); 15 U.S.C. 6801–6809; 31 U.S.C. 5311 and 5318.

■ 4. In § 748.1, revise paragraph (a) to read as follows:

§ 748.1 Filing of reports.

(a) The president or managing official of each federally-insured credit union must certify compliance with the requirements of this part in its Credit Union Profile annually through NCUA's online information management system.

* * * * *

[FR Doc. 2013–18299 Filed 8–1–13; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–114122–12]

RIN 1545–BK96

Controlled Group Regulation Examples

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document proposes revisions to examples that illustrate the controlled group rules related to regulated investment companies (RICs). These proposed revisions resolve an issue with how the controlled group rules should be applied in connection with the RIC ''asset diversification'' test. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments must be received by October 31, 2013. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for December 9, 2013, at 10 a.m., must be received by October 31, 2013.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–114122–12), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–114122–12), Courier's Desk, Internal Revenue

[6] 5 U.S.C. 603(a).

[7] Interpretive Ruling and Policy Statement 03–2, 68 FR 31949 (May 29, 2003), as amended by Interpretative Ruling and Policy Statement 13–1, 78 FR 4032 (Jan. 18, 2013).

[8] 44 U.S.C. 3507(d); 5 CFR part 1320.

Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–114122–12). The public hearing will be held in the Auditorium, beginning at 10 a.m., at the Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Julanne Allen at (202) 622–3920; concerning submissions of comments, the public hearing, and/or to be placed on the building access list to attend the public hearing, Oluwafunmilayo (Funmi) Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) relating to the application of the ''controlled group'' rules found in section 851(c) of the Internal Revenue Code of 1986, as amended (Code).

Section 851(b)(3)(B) provides that, to qualify as a RIC, a taxpayer must meet an asset diversification test pursuant to which not more than 25 percent of the value of the taxpayer's total assets may be invested in (i) the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer, (ii) the securities (other than the securities of other regulated investment companies) of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses, or (iii) the securities of one or more qualified publicly traded partnerships (as defined in section 851(h)).

The controlled group rules in section 851(c) provide that, when ascertaining the value of a taxpayer's investment in the securities of a particular issuer for purposes of determining whether the asset diversification test has been met, the proportion of any investment in the securities of such issuer by a member of the taxpayer's ''controlled group'' should be aggregated with the taxpayer's investment in such issuer, as determined under regulations. Section 851(c)(3) defines a controlled group as one or more chains of corporations connected through stock ownership with the taxpayer if—(i) 20 percent or more of the total combined voting power of all classes of stock entitled to vote of each of the corporations (except the taxpayer) is owned directly by one or more of the other corporations; and (ii) the taxpayer owns directly at least 20 percent or more of the total combined voting power of all classes of stock entitled to vote of at least one of the other corporations. Clarification is needed regarding whether a RIC and its controlled subsidiary are a controlled group if the subsidiary does not control (within the meaning of section 851(c)(2)) at least one other corporation.

The definition of a controlled group for purposes of the RIC rules was first enacted in 1942 and appears to have been modeled on the definition of an ''affiliated group'' in the predecessor to current section 1504(a). The predecessor to current section 1504(a) used language nearly identical, save for different ownership thresholds, to the definition of controlled group for purposes of the RIC rules. *See* HR Rep. No. 2333, 77th Cong., 2nd Sess. 122 (1942), 1942–2 CB 372, 462–63; *see also* the Revenue Act of 1928, ch. 852, sec. 141(d), 45 Stat. 791, 831 (1928) (enacting the predecessor to section 1504(a)). The current regulations under section 851 include a series of examples, two of which reproduce, nearly verbatim, examples contained in the 1942 legislative history. See § 1.851–5, *Examples 3* and *4.* Some practitioners have interpreted section 851(c)(3) to require the presence of two levels of controlled entities for a controlled group to exist, and have relied on certain of the examples in the regulations, and the 1942 legislative history, to support this interpretation. The IRS and the Treasury Department believe that this interpretation is unwarranted. Accordingly, through revisions to the existing examples, these proposed regulations clarify that two corporations constitute a controlled group if the ownership requirements of section 851(c)(3) are met.

The IRS and the Treasury Department believe that the interpretation of the controlled group rules reflected in these proposed regulations is consistent both with the statutory language of section 851(c)(3) and the interpretation of analogous Code provisions. For example, for purposes of the consolidated return rules, the IRS has consistently treated a parent and its directly owned subsidiary as ''affiliated'' within the meaning of section 1504(a)(1) regardless of whether the subsidiary controlled another subsidiary. Likewise, in limiting certain tax benefits for affiliated corporations, the IRS treats a parent and its subsidiary as a ''controlled group'' under section 1563, which uses language similar to section 1504(a), regardless of whether the subsidiary controls another entity. *See* section 1563(a)(1) and § 1.1563–1(a)(2)(ii), Example 1. The interpretation reflected in these proposed regulations is also consistent with the purpose of section 851(c)(3), which is to aggregate the investments of related corporations for purposes of the asset diversification test.

The IRS and the Treasury Department believe that the language in the examples in the existing regulations and in the 1942 legislative history was intended merely to simplify the description of certain fact patterns, and not to articulate a legal interpretation that is inconsistent with the construction of substantially similar language elsewhere in the Code and that is unsupported by practical or policy considerations grounded in the statutory scheme.

Explanation of Provisions

The proposed regulations update examples in existing § 1.851–5. The controlled group rules of section 851(c) prevent a RIC from exceeding the limitations set forth in section 851(b)(3) by indirectly investing in the securities of an issuer through a subsidiary. This update clarifies the controlled group rules and confirms that they are applied in a manner consistent with sections 1504 and 1563.

First, the proposed changes to the regulations clarify the two examples that have caused confusion. In Example 1, additional language would clarify which entities in the example are members of a controlled group. Currently, the example states that none of the subsidiaries of the RIC in the example is a member of a controlled group. The IRS and the Treasury Department believe that this statement was intended merely to indicate that none of the wholly owned subsidiaries in the example controlled another subsidiary. Consistent with the statutory language of section 851(c)(3), the proposed regulations would clarify that each of the RIC's wholly owned subsidiaries is a member of a controlled group with the RIC.

Example 4, which is derived from the legislative history of section 851(c)(3), is revised to remove references to ownership by controlled group members of greater than 20 percent interests in an issuer. The existing language has sometimes been misinterpreted to mean that in order for a subsidiary's holdings in an issuer to be aggregated with the holdings of the parent RIC, the subsidiary must have a controlling interest in the issuer. The proposed revision to Example 4 would ensure that Example 4 is applied in a manner

consistent with the statutory language of section 851(c)(3).

Second, the proposed changes would add a new example to illustrate both the mechanics of the controlled group rules as applied to wholly owned subsidiaries and the application of section 851(b)(3)(B)(iii)'s rule with respect to securities of qualified publicly traded partnerships.

Third, the proposed changes would update the dates used in the examples (1955) to the current year (2013 or 2014, where appropriate) and would update references from section 851(b)(4) to refer instead to section 851(b)(3). Section 1271(b)(1) of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788, 1063 (1997)), redesignated section 851(b)(4) as section 851(b)(3).

Finally, for additional clarity, these proposed regulations would add citations to section 851(d)(1) in *Examples 5* and *6.*

Proposed Effective Date

The proposed changes apply to quarters that begin at least 90 days after the date of publication in the **Federal Register** of a Treasury decision adopting these rules as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entitles, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted to the IRS. The IRS and the Treasury Department request comments on all aspects of the proposed examples. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 9, 2013, beginning at 10:00 a.m. in the IRS Auditorium, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by October 31, 2013 and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 31, 2013. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of this notice is Julanne Allen of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice contact Julanne Allen at (202) 622–3920 (not a toll-free call).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.851–5 also issued under 26 U.S.C. 851(c).

■ **Par. 2.** Section 1.851–5 is revised to read as follows:

§ 1.851–5 Examples.—The provisions of section 851 may be illustrated by the following examples:

(a) *Example 1.* Investment Company W at the close of its first quarter of its taxable year has its assets invested as follows:

	Percent
Cash	5
Government securities	10
Securities of regulated investment companies	20
Securities of Corporation A	10
Securities of Corporation B	15
Securities of Corporation C	20
Securities of various corporations (not exceeding 5 percent of its assets in any one company)	20
Total	100

Investment Company W owns all of the voting stock of Corporations A and B, 15 percent of the voting stock of Corporation C, and less than 10 percent of the voting stock of regulated investment companies and various other corporations. Neither Corporation A nor Corporation B owns (i) 20 percent or more of the voting stock of any other corporation, (ii) securities issued by Corporation C, or (iii) securities issued by any of the regulated investment companies or various corporations whose securities are owned by Investment Company W. Except for Corporation A and Corporation B, none of the corporations (including the regulated investment companies) is a member of a controlled group with Investment Company W.

Investment Company W meets the requirements under section 851(b)(3) at the end of its first quarter. It complies with subparagraph (A) of section 851(b)(3) because it has 55 percent of its assets invested as provided in that subparagraph. It complies with subparagraph (B) of section 851(b)(3) because it does not have more than 25 percent of its assets invested in the securities of any one issuer, of two or more issuers that it controls, or of one or more qualified publicly traded partnerships (as defined in section 851(h)).

Example 2. Investment Company V at the close of a particular quarter of the taxable year has its assets invested as follows:

	Percent
Cash	10
Government securities	35
Securities of Corporation A	7
Securities of Corporation B	12
Securities of Corporation C	15
Securities of Corporation D	21
Total	100

Investment Company V fails to meet the requirements of subparagraph (A) of section 851(b)(3) since its assets invested in Corporations A, B, C, and D exceed in each case 5 percent of the value of the total assets of the company at the close of the particular quarter.

Example 3. Investment Company X at the close of the particular quarter of the taxable year has its assets invested as follows:

	Percent
Cash and Government securities	20

	Percent
Securities of Corporation A	5
Securities of Corporation B	10
Securities of Corporation C	25
Securities of various corporations (not exceeding 5 percent of its assets in any one company)	40
Total	100

Investment Company X owns more than 20 percent of the voting power of Corporations B and C and less than 10 percent of the voting power of all of the other corporations. Corporation B manufactures radios and Corporation C acts as its distributor and also distributes radios for other companies. Investment Company X fails to meet the requirements of subparagraph (B) of section 851(b)(3) since it has 35 percent of its assets invested in the securities of two issuers which it controls and which are engaged in related trades or businesses.

Example 4. Investment Company Y at the close of a particular quarter of its taxable year has its assets invested as follows:

	Percent
Cash and Government securities	15
Securities of Corporation K (a regulated investment company)	30
Securities of Corporation A	10
Securities of Corporation B	20
Securities of various corporations (not exceeding 5 percent of its assets in any one company)	25
Total	100

Corporation K has 20 percent of its assets invested in Corporation L, and Corporation L has 40 percent of its assets invested in Corporation B. Corporation A also has 30 percent of its assets invested in Corporation B. Investment Company Y owns more than 20 percent of the voting power of Corporations A and K. Corporation K owns more than 20 percent of the voting power of Corporation L.

At the end of that quarter, Investment Company Y is disqualified under subparagraph (B)(i) of section 851(b)(3) because, after applying section 851(c)(1), more than 25 percent of the value of Investment Company Y's total assets is invested in the securities of Corporation B. This result is shown by the following calculation:

	Percent
Percentage of assets invested directly in Corporation B	20.0
Percentage invested through K and L (30% × 20% × 40%) ...	2.4
Percentage invested indirectly through A (10% × 30%)	3.0
Total percentage of assets of Investment Company Y invested in Corporation B	25.4

Example 5. Investment Company Z, which keeps its books and makes its returns on the basis of the calendar year, at the close of the first quarter of 2013 meets the requirements of section 851(b)(3) and has 20 percent of its assets invested in Corporation A. Later during the taxable year it makes distributions to its shareholders and because of such distributions, it finds at the close of the taxable year that it has more than 25 percent of its remaining assets invested in Corporation A. Investment Company Z does not lose its status as a regulated investment company for the taxable year 2013 because of such distributions, nor will it lose its status as a regulated investment company for 2014 or any subsequent year solely as a result of such distributions. See section 851(d)(1).

Example 6. Investment Company Q, which keeps its books and makes its returns on the basis of a calendar year, at the close of the first quarter of 2013, meets the requirements of section 851(b)(3) and has 20 percent of its assets invested in Corporation P. At the close of the taxable year 2013, it finds that it has more than 25 percent of its assets invested in Corporation P. This situation results entirely from fluctuations in the market values of the securities in Investment Company Q's portfolio and is not due in whole or in part to the acquisition of any security or other property. Corporation Q does not lose its status as a regulated investment company for the taxable year 2013 because of such fluctuations in the market values of the securities in its portfolio, nor will it lose its status as a regulated investment company for 2014 or any subsequent year solely as a result of such market value fluctuations. See section 851(d)(1).

Example 7. Investment Company T at the close of a particular quarter of its taxable year has its assets invested as follows:

	Percent
Cash and Government securities	40
Securities of Corporation A	20
Securities of various qualified publicly traded partnerships (within the meaning of sections 851(b)(3) and 851(h)) ...	15
Securities of various corporations (not exceeding 5 percent of its assets in any one company)	25
Total	100

Investment Company T owns more than 20 percent of the voting power of Corporation A and less than 10 percent of the voting power of all of the other corporations. Corporation A has 80 percent of its assets invested in qualified publicly traded partnerships.

Investment Company T is disqualified under subparagraph (B)(iii) of section 851(b)(3), because, after applying section 851(c)(1), more than 25 percent of the value of Investment Company T's total assets is invested in the securities of one or more qualified publicly traded partnerships. This result is shown by the following calculation:

	Percent
Percentage of assets invested directly in qualified publicly traded partnerships	15.0
Percentage invested in qualified publicly traded partnerships indirectly through A (20% × 80%)	16.0
Total percentage of assets of Investment Company T invested in qualified publicly traded partnerships	31.0

(b) *Effective/applicability date.* The proposed revisions apply to quarters that begin at least 90 days after the date of publication of the Treasury decision adopting these rules as a final regulation in the **Federal Register**.

Beth Tucker,

Deputy Commissioner for Operations Support.

[FR Doc. 2013–18717 Filed 8–1–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112815–12]

RIN 1545–BK99

Mixed Straddles; Straddle-by-Straddle Identification Under Section 1092(b)(2)(A)(i)(I)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register** the Treasury Department and the IRS are issuing temporary regulations that explain how to account for unrealized gain or loss on a position held by a taxpayer prior to the time the taxpayer establishes a mixed straddle using straddle-by-straddle identification. The text of the temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments must be received by October 31, 2013. Request to speak and

outlines of topics to be discussed at the public hearing scheduled for December 4, 2013, at 10 a.m. must be received by October 31, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–112815–12), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–112815–12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–112815–12).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Elizabeth M. Bouzis or Robert B. Williams at (202) 622–3950; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 1092(b). First, the temporary regulations limit the application of § 1.1092(b)–3T(b)(6) to section 1092(b)(2) identified mixed straddles established on or before August 1, 2013. Second, a new § 1.1092(b)–6T provides that unrealized gain and loss on a position held prior to establishing a section 1092(b)(2) identified mixed straddle is taken into account at the time and has the character provided by provisions of the Internal Revenue Code (Code) that would apply if the section 1092(b)(2) identified mixed straddle had not been established. Section 1.1092(b)–6T applies to section 1092(b)(2) identified mixed straddles established after August 1, 2013. The text of the temporary regulations also serves as the text of these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** heading. The Treasury Department and the IRS welcome comments on this proposed regulation. All comments will be available at *www.regulations.gov* or upon request.

A public hearing has been scheduled for December 4, 2013, beginning at 10 a.m. in the Auditorium of the Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic by October 31, 2013. Submit a signed paper original and eight (8) copies or an electronic copy. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Elizabeth M. Bouzis, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1092(b)–6 also issued under 26 U.S.C. 1092(b)(1).

Section 1.1092(b)–6 also issued under 26 U.S.C. 1092(b)(2). * * *

■ **Par. 2.** Section 1.1092(b)–3 is added to read as follows:

§ 1.1092(b)–3 Mixed straddles; straddle-by-straddle identification under section 1092(b)(2)(A)(i)(I).

[The text of the proposed amendments to § 1.1092(b)–3(b)(6) is the same as the text for the amendments to § 1.1092(b)–3T(b)(6) published elsewhere in this issue of the **Federal Register**].

■ **Par. 3.** Section 1.1092(b)–6 is added to read as follows:

§ 1.1092(b)–6 Mixed straddles; accrued gain and loss associated with a position that becomes part of a section 1092(b)(2) identified mixed straddle that is established after August 1, 2013.

[The text of § 1.1092(b)–6 is the same as the text for § 1.1092(b)–6T published elsewhere in this issue of the **Federal Register**].

Beth Tucker,

Deputy Commissioner for Operations Support.

[FR Doc. 2013–18701 Filed 8–1–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0600]

RIN 1625–AA00

Safety Zone; East End Maritime Foundation Fireworks Display, Greenport Harbor, Greenport, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the

navigable waters of Greenport Harbor near Greenport, NY for the East End Maritime Foundation fireworks display. This action is necessary to provide for the safety of life on navigable waters during the event. Entering into, transiting through, remaining, anchoring or mooring within this regulated area would be prohibited unless authorized by the Captain of the Port Sector Long Island Sound.

DATES: Comments and related material must be received by the Coast Guard on or before September 3, 2013.

Requests for public meetings must be received by the Coast Guard on or before August 9, 2013.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Scott Baumgartner, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468–4559, *Scott.A.Baumgartner@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
LIS Long Island Sound
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2013–0600] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2013–0600) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES** on or before August 9, 2013. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1 which collectively authorize the Coast Guard to define regulatory safety zones.

Because spectator vessels are expected to congregate around the location of the fireworks display, this regulated area is necessary to protect both spectators and participants from the hazards created by unexpected pyrotechnics detonation, and burning debris. This proposed rule would temporarily establish a regulated area to restrict vessel movement around the location of the fireworks display. This proposed temporary regulation is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks display.

C. Discussion of Proposed Rule

This temporary rule proposes to establish a safety zone for the East End Maritime Foundation fireworks display. This proposed regulated area includes all waters of Greenport Harbor within a 600 foot radius of the fireworks barge to be located approximately 600 yards Southeast of Mitchell Park and Marina in Greenport, NY.

This rule will be enforced for a limited period of time on September 21, 2013, with a rain date of September 22, 2013. Specific times can be found in the regulatory text.

To aid the public in identifying the launch platform; fireworks barges used for this display will have a sign on their port and starboard side labeled

''FIREWORKS—STAY AWAY.'' This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background.

Public notifications may be made to the local maritime community prior to the event through the Local Notice to Mariners, and Broadcast Notice to Mariners.

D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: The regulated area will be of limited duration, the area covers only a small portion of the navigable waterways and waterway users may transit around the area. Also, mariners may request permission from the COTP Sector Long Island Sound or the designated representative to transit the zone.

Advanced public notifications will also be made to the local maritime community through the Local Notice to Mariners as well as Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit, anchor or moor within the regulated area during the effective period. The temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The regulated area will be of limited size and of short duration and mariners may request permission from the COTP Sector Long Island Sound or the designated representative to transit the zone. Notifications will be made to the maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children From Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions

Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a safety zone. This rule may be categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREA AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0600 to read as follows:

§ 165.T01–0600 Safety Zone; East End Maritime Foundation Fireworks Display, Greenport Harbor, Greenport, NY.

(a) *Location.* The following area is a safety zone: All waters of Greenport Harbor within a 600-foot radius of the fireworks barge located in approximate position 41°05′55.00″ N, 072°21′18.00″ W (NAD 83).

(b) *Effective Period.* This section will be effective from 8 p.m. on September 21, 2013, until 10 p.m. on September 22, 2013.

(c) *Enforcement Period.* This section will be enforced from 8 p.m. until 10 p.m. on September 21, 2013. If the event is postponed due to inclement weather, then this rule will be enforced from 8 p.m. until 10 p.m. on September 22, 2013.

(d) Definitions. The following definitions apply to this section:

(1) Designated Representative. A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP, Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(e) *Regulations.* The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entering into, transiting through, remaining, mooring or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port (COTP) or the designated representatives.

(1) Spectators desiring to enter or operate within the regulated area should contact the COTP Sector Long Island Sound at 203–468–4401 (Sector LIS command center) or the designated representative via VHF channel 16 to obtain permission to do so. Spectators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP Sector Long Island Sound or the designated on-scene representative.

(2) Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(3) Fireworks barges used in this location will have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY''. This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background.

Dated: July 22, 2013.

H.L. Morrison,

Commander, U.S. Coast Guard, Acting Captain of the Port, Sector Long Island Sound.

[FR Doc. 2013–18616 Filed 8–1–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

Proposed Waiver and Extension of the Project Period for the Individuals With Disabilities Education Act (IDEA) Partnership Project

AGENCY: Office of Special Education Programs (OSEP), Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Proposed waiver and extension of the project period.

[Catalog of Federal Domestic Assistance (CFDA) Number: 84.326A.]

SUMMARY: For the currently funded IDEA Partnership Project (Partnership Project) grantee, the Secretary proposes to waive the requirements that generally prohibit project periods exceeding five years and project period extensions involving the obligation of additional Federal funds. The Secretary also proposes to extend current project period for one year. The proposed waiver and extension of the project period would enable the currently funded Partnership Project grantee to receive funding from October 1, 2013, through September 30, 2014.

DATES: We must receive your comments on or before September 3, 2013.

ADDRESSES: Address all comments about this proposed waiver and extension of the project period to Renee Bradley, U.S. Department of Education, 400 Maryland Avenue SW., room 4103, Potomac Center Plaza (PCP), Washington, DC 20202–2600.

If you prefer to send your comments by email, use the following address: *renee.bradley@ed.gov.* You must include the phrase ''Proposed waiver and extension of the project period'' in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Renee Bradley. Telephone: (202) 245–7277, or by email: *renee.bradley@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this proposed waiver and extension. During and after the comment period, you may inspect all public comments about this proposed waiver and extension of the project period in room 4103, PCP, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week, except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

On July 15, 2008, the Department published a notice in the **Federal Register** (73 FR 40548) inviting applications for new awards for fiscal year (FY) 2008 for the Partnership Project funded under the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (TA&D) program, authorized under section 663 of IDEA. The Partnership Project is intended to provide opportunities for national associations to collaborate with each other and with their collective State and local affiliates to improve the implementation of education policies and practices in States. The goal of the Partnership Project is also intended to bridge the gap between research, policy, and practice in both special education and general education so that the needs of all students can be meaningfully addressed. The Partnership Project has worked to unite multiple national associations, and their State and local affiliates, representing policymakers, service providers, local-level administrators, and families to improve the implementation of IDEA and outcomes for students with disabilities. These associations and their State and local affiliates need continued support to engage in meaningful dialogue, continual learning, and problem solving that will improve the implementation of IDEA and outcomes for students with disabilities.

The Department made one award for a period of 60 months to the National Association of State Directors of Special Education (NASDSE) to establish the Partnership Project. The current project period is scheduled to end on September 30, 2013.

The Partnership Project links the expertise and resources available through the OSEP Technical Assistance and Dissemination Network with stakeholder organizations to build innovative dissemination strategies. The Partnership Project has developed and enhanced tools and strategies to improve the collaboration and engagement of stakeholder organizations linked with State improvement efforts to implement evidence-based practices, improve the implementation of IDEA, and improve outcomes for children with disabilities within general education reform efforts. Engagement tools and strategies include: (1) Various Dialogue Guides, focused on education reform efforts such as standards-based assessment, college- and career-readiness, and the school-to-prison pipeline; (2) communities of practice development and implementation; and (3) stakeholder engagement protocols.

At this time, we do not believe that it would be in the public interest to run a competition for a new Partnership Project because the Department is planning to change the organization of its technical assistance (TA) activities to better meet the needs of States and local affiliates and families. We also have concluded that it would be contrary to the public interest to have a lapse in the provision of the TA services currently provided by the Partnership Project pending the changes to the organization of the Department's TA activities.

For these reasons, the Secretary proposes to waive the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, and waive the requirements in 34 CFR 75.261(a) and (c)(2), which allow the extension of a project period only if the extension does not involve the obligation of additional Federal funds. The Secretary further proposes to issue a continuation award in the amount of $1,699,000 to NASDSE for an additional 12-month period. This continuation award should ensure that the Partnership Project's TA, coordinated training, outreach, and dissemination of information to the partners' State and local affiliates and families will not be interrupted.

Any activities to be carried out during the year of the continuation award would have to be consistent with, or be a logical extension of, the scope, goals, and objectives of the grantee's application as approved in the 2008 Partnership Project competition.

If the proposed waiver and extension of the project period are announced in a final notice in the **Federal Register**, the requirements applicable to continuation awards for this competition set forth in the July 15, 2008, notice inviting applications and the requirements in 34 CFR 75.253 would apply to any continuation awards sought by the current IDEA Partnership grantee. If we announce the waiver and extension as final, we will base our decisions regarding a continuation award on the program narrative, budget, budget narrative, and program performance report submitted by the current grantee, as well as the requirements in 34 CFR 75.253.

Regulatory Flexibility Act Certification

The Department certifies that the proposed waiver and extension of the project period would not have a significant economic impact on a substantial number of small entities. The only entity that would be affected by the proposed waiver and extension of the project period is the current grantee.

The Secretary certifies that the proposed waiver and extension would not have a significant economic impact on this entity because the proposed waiver and extension of the project period imposes minimal compliance costs, and the activities required to support the additional year of funding would not impose additional regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1995

This notice of proposed waiver and extension of the project period does not contain any information collection requirements.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is

available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 29, 2013.

Michael K. Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–18529 Filed 8–1–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

Proposed Waiver and Extension of the Project Period for the Technical Assistance Coordination Center

AGENCY: Office of Special Education Programs (OSEP), Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Proposed waiver and extension of the project period.

[Catalog of Federal Domestic Assistance (CFDA) Number: 84.326Z.]

SUMMARY: The Secretary proposes to waive the requirements in our regulations of the Education Department General Administrative Regulations that, respectively, generally prohibit project periods exceeding five years and project period extensions involving the obligation of additional Federal funds. The proposed waiver and extension of the project period would enable the currently funded Technical Assistance Coordination Center to receive funding from October 1, 2013, through September 30, 2014.

DATES: We must receive your comments on or before September 3, 2013.

ADDRESSES: Address all comments about this proposed waiver and extension of the project period to David Guardino, U.S. Department of Education, 400 Maryland Avenue SW., Room 4106, Potomac Center Plaza (PCP), Washington, DC 20202–2600.

If you prefer to send your comments by email, use the following address: *david.guardino@ed.gov.* You must include the phrase ''Proposed waiver and extension of the project period'' in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: David Guardino. Telephone: (202) 245–6209, or by email: *david.guardino@ed.gov*.

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this proposed waiver and extension. During and after the comment period, you may inspect all public comments about this proposed waiver and extension of the project period in Room 4106, PCP, 550 12th Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week, except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

On June 5, 2008, the Department published a notice in the **Federal Register** (73 FR 32016) inviting applications for new awards for fiscal year (FY) 2008 for a Technical Assistance Coordination Center (Center). The Center was funded under the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (TA&D) program, authorized under section 663 of the Individuals with Disabilities Education Act (IDEA). Its purpose is to support ongoing communication, collaboration, and coordination among the centers in the OSEP-funded TA&D Network, and between these centers and other relevant federally funded TA&D centers, national professional organizations, and a broad spectrum of stakeholders. Approximately 30 OSEP-funded centers comprise the TA&D Network and provide technical assistance (TA) covering a variety of areas to State educational agencies (SEAs), local educational agencies (LEAs), Part C State lead agencies, early intervention service (EIS) programs and providers, families of children with disabilities, and others to improve services and outcomes for children served under Part B and Part C of IDEA.

Based on the selection criteria published in the 2008 notice inviting applications, the Department made one award for a period of 60 months to the Academy for Educational Development, Inc. (now FHI 360) to establish the Center, which is currently known as the Technical Assistance Coordination Center.

The Center has two broad goals:

(1) Create a resource center where the various TA&D centers funded by OSEP and other Federal agencies that provide assistance and support to States, LEAs, EIS programs and providers, and stakeholders in the field can store and share information and resources developed by TA providers.

(2) Support OSEP in developing a comprehensive network integrating a variety of relevant federally funded centers, professional organizations, and other stakeholders to collaborate, solve problems together, and exchange knowledge and expertise.

The Center accomplishes this work by: (a) Creating ongoing opportunities to promote coordination, communication, and collaboration among OSEP-funded TA centers and other federally funded TA centers through various workgroups, meetings, listservs, and TA communities of practice; (b) maintaining a Web site that houses tools that TA&D Network projects have developed or can use in their TA delivery (e.g., product database, discretionary database, and TA&D Network Web site search); and (c) sharing knowledge of best practices in collaboration with the TA&D Network and other federally funded TA centers.

The Center's current project period is scheduled to end on September 30, 2013. We do not believe that it would be in the public interest to run a competition for a new Center this year because the Department is planning to change the organization of its TA activities to better coordinate Federal TA activities to meet the needs of children with disabilities. We also have concluded that it would be contrary to the public interest to have a lapse in the provision of TA services currently provided by the Center pending the changes to the organization of the Department's TA activities. For these reasons, the Secretary proposes to waive the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, and waive the requirements in 34 CFR 75.261(a) and (c)(2), which allow the extension of a project period only if the extension does

not involve the obligation of additional Federal funds. The waiver would allow the Department to issue a continuation award in the amount of $1,299,827 to FHI 360 for an additional 12-month period, which should ensure that the Center's support of, and collaboration and coordination with, the Federal TA&D centers will not be interrupted.

Any activities to be carried out during the year of the continuation award would have to be consistent with, or be a logical extension of, the scope, goals, and objectives of the grantee's application as approved in the 2008 Technical Assistance Coordination Center competition.

If the proposed waiver and extension of the project period are announced in a final notice in the **Federal Register,** the requirements applicable to continuation awards for this competition, set forth in the June 5, 2008, notice inviting applications, and the requirements in 34 CFR 75.253 would apply to any continuation awards sought by the current Technical Assistance Coordination Center grantee. If we announce the waiver and extension as final, we will base our decisions regarding a continuation award on the program narrative, budget, budget narrative, and program performance report submitted by the current grantee, and the requirements in 34 CFR 75.253.

Regulatory Flexibility Act Certification

The Department certifies that the proposed waiver and extension of the project period would not have a significant economic impact on a substantial number of small entities.

The only entity that would be affected by the proposed waiver and extension of the project period is the current grantee.

The Secretary certifies that the proposed waiver and extension would not have a significant economic impact on this entity because the extension of an existing project imposes minimal compliance costs, and the activities required to support the additional year of funding would not impose additional regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1995

This notice of proposed waiver and extension of the project period does not contain any information collection requirements.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

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Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 29, 2013.

Michael K. Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–18539 Filed 8–1–13; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0658; FRL–9840–8]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Second Ten-Year Carbon Monoxide Maintenance Plan for Greeley

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Colorado. On March 31, 2010, the Governor of Colorado's designee submitted to EPA a Clean Air Act (CAA) section 175A(b) second 10-year maintenance plan for the Greeley area for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS). This limited maintenance plan (LMP) addresses maintenance of the CO NAAQS for a second 10-year period beyond the original redesignation. This action is being taken under sections 110 and 175A of the CAA.

DATES: Written comments must be received on or before September 3, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2011–0658, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: clark.adam@epa.gov*.
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules and Regulations section of this **Federal Register** for detailed instruction on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–7104, *clark.adam@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving Colorado's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second

comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 16, 2013.

Judith Wong,

Acting Regional Administrator, Region 8.

[FR Doc. 2013–18440 Filed 8–1–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2013–0080; 4500030113]

RIN 1018–AZ57

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Ivesia webberi* (Webber's ivesia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the *Ivesia webberi* (Webber's ivesia) under the Endangered Species Act (Act). In total, approximately 2,011 acres (814 hectares) in Plumas, Lassen, and Sierra Counties in northeastern California and Washoe and Douglas Counties in northwestern Nevada fall within the boundaries of the proposed critical habitat designation. If we finalize this rule as proposed, it would extend the Act's protections to this species' critical habitat. The effect of this regulation is to designate critical habitat for *Ivesia webberi* under the Act.

DATES: *Comment submission:* We will accept comments received or postmarked on or before October 1, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by September 16, 2013.

Public meeting: We will hold a public meeting on this proposed rule on August 22, 2013, in Reno, NV, from 4:00 to 6:00 p.m. People needing reasonable accommodations in order to attend and participate in the public hearing should contact Jeannie Stafford, Nevada Fish and Wildlife Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2013–0080, which is the docket number for this rulemaking. You may submit a comment by clicking on ''Comment Now!.''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2013–0080; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more information).

Public meeting: The public meeting will be held at the U.S. Department of the Interior Building, Great Basin Conference Room, 1340 Financial Blvd., Reno, NV 89502.

Details of units: The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at (*http://www.fws.gov/nevada/*), *www.regulations.gov* at Docket No. FWS–R8–ES–2013–0080, and at the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above and at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Edward D. Koch, State Supervisor, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502, by telephone 775–861–6300, or by facsimile 775–861–6301. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act, any species that is determined to be endangered or threatened requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can be completed only by issuing a rule.

This rule consists of: A proposed rule for designation of critical habitat for *Ivesia webberi.* This rule proposes designation of critical habitat necessary for the conservation of the species. Under this rule, we are proposing to designate a total of 2,011 acres (ac) (814 hectares (ha)) for *Ivesia webberi* within Plumas, Lassen, and Sierra Counties in northeastern California and Washoe and Douglas Counties in northwestern Nevada. We are proposing to list *Ivesia webberi* as a threatened species in a separate rule published elsewhere in today's **Federal Register**.

The basis for our action. Under the Endangered Species Act, any species that is determined to be a threatened or endangered species shall, to the maximum extent prudent and determinable, have habitat designated that is considered to be critical habitat. Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

We are preparing an economic analysis of the proposed designation of critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek additional public review and comment.

We will seek peer review. We are seeking comments from independent specialists to ensure that our listing proposal is based on scientifically sound data and analyses. We have invited these peer reviewers to comment on our specific assumptions and

conclusions in this listing proposal. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of *Ivesia webberi* habitat,

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why,

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change, and

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Whether we could improve or modify our approach to designating critical habitat in any way to facilitate management of critical habitat by private, State, or Federal landowners. For example, could altering the configuration of critical habitat unit boundaries facilitate management of critical habitat?

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(8) Information on the projected and reasonably likely impacts of climate change on the *Ivesia webberi* and proposed critical habitat.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

Please see the proposed listing rule published elsewhere in today's **Federal Register** for a complete history of previous Federal actions. We identified *Ivesia webberi* as a candidate in the June 13, 2002, Candidate Notice of Review (CNOR, 67 FR 40657). *Ivesia webberi* was included in all subsequent annual CNORs. On May 11, 2004, we received a petition to list a total of 225 plant and animal species from the list of candidate species, including *I. webberi*. Because we previously found the species was warranted for proposed listing, no further action was taken on the petition. When it was first identified as a candidate in 2002 (67 FR 40657), we assigned *I. webberi* a listing priority number (LPN) of 5, reflecting a species with threats that were considered high in magnitude but nonimminent; the LPN remained at 5 in all subsequent CNORs.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of

the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or

(2) such designation of critical habitat would not be beneficial to the species.

There is currently no imminent threat of take attributed to collection or vandalism for *Ivesia webberi,* and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. Here, the potential benefits of designation include: (1) Triggering consultation under section 7 of the Act in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for *I. webberi.*

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for *Ivesia webberi* is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where these species are located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the *Ivesia webberi.*

Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

We derive the specific physical or biological features essential for *Ivesia webberi* from studies of this species' habitat, ecology, and life history as described below. Additional information can be found in the proposed listing rule published elsewhere in today's **Federal Register** and in the *Ivesia webberi* (Webber's ivesia) Species Report (Service 2013, pp. 1–46) available at *http://www.regulations.gov* (in the Search box, enter FWS–R8–ES–2013–0080, which is the docket number for this rulemaking). Little is known about the habitat specificity and characteristics for *I. webberi.* Therefore, the physical and biological factors for *I. webberi* are based on our assessment of the ecosystem settings in which the species is most frequently detected. We have determined that the following physical or biological features are essential for *I. webberi* (see ''Habitat'' section in the Species Report (Service 2013, pp. 6–7)):

Space for Individual and Population Growth and for Normal Behavior

Plant Community and Competitive Ability—*Ivesia webberi* is primarily associated with *Artemisia arbuscula* Nutt. (low sagebrush) and other perennial, rock garden-type plants such as: *Antennaria dimorpha* (low pussytoes), *Balsamorhiza hookeri* (Hooker's balsamroot), *Elymus elymoides* (squirreltail), *Erigeron bloomeri* (scabland fleabane), *Lewisia rediviva* (bitter root), *Poa secunda* (Sandburg bluegrass), and *Viola beckwithii* (Beckwith's violet) (Witham 2000, p. 17; Morefield 2004, 2005, unpubl. survey; Howle and Henault 2009, unpubl. survey; BLM 2011, 2012a, unpubl. survey; Howle and Chardon 2011a, 2011b, 2011c, unpubl. survey). Overall, this plant community is open and sparsely vegetated and relatively short-statured, with *I. webberi* often dominating or co-dominating where it occurs (Witham 2000, p. 17).

Because *Ivesia webberi* is found in an open, sparsely vegetated plant community, it is likely a poor competitor. Nonnative, invasive plant species such as *Bromus tectorum* L. (cheatgrass), *Taeniatherum caput-medusae* (medusahead), and *Poa bulbosa* (bulbous bluegrass) form dense stands of vegetation that compete with native plant species, such as *I. webberi,* for the physical space needed to establish individuals and recruit new seedlings. This competition for space is compounded as dead or dying nonnative vegetation accumulates, eventually forming a dense thatch that obscures the soil crevices used by native species as seed accumulation and seedling recruitment sites (Davies 2008, pp. 110–111; Gonzalez *et al.* 2008, entire; Mazzola *et al.* 2011, pp. 514–515; Pierson *et al.* 2011, entire). Consequently, nonnative species deter recruitment and population expansion of *I. webberi,* as well as the entire *Artemisia arbuscula*–perennial bunchgrass–forb community with which *I. webberi* is associated. Therefore, we consider open, sparsely vegetated assemblages of *A. arbuscula* and other perennial grass and forb rock garden species to be a physical or biological feature for *I. webberi.*

Elevation—Known populations of *Ivesia webberi* occur between 4,475 and 6,237 feet (ft) (1,364 and 1,901 meters (m)) in elevation (Steele and Roe 1996, unpubl. survey; Witham 2000, p.16; Howle and Henault 2009, unpubl. survey). Because plants are not currently known to occur outside of this elevation band, we have identified this elevation range as a physical or biological feature for *I. webberi.*

Topography, Slope, and Aspect—*Ivesia webberi* occurs on flats, benches, or terraces that are generally above or adjacent to large valleys. These sites vary from slightly concave to slightly convex or gently sloped (0–15°) and occur on all aspects (Witham 2000, p. 16). Because plants have not been identified outside these landscape features or on slopes greater than 15°, we have identified slightly concave, convex, and gently sloped (0–15°) landscapes to be physical and biological features for *I. webberi.*

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Soils—Populations of *Ivesia webberi* occur on a variety of soil series types, including, but not limited to: Reno—a fine, smectitic, mesic Abruptic Xeric Argidurid; Xman—a clayey, smectitic, mesic, shallow Xeric Haplargids; Aldi—a clayey, smectitic, frigid Lithic Ultic Argixerolls; and Barshaad—a fine, smectitic, mesic Aridic Palexeroll (USDA NRCS (U.S. Department of Agriculture Natural Resources Conservation Service) 2007, 2009a, 2009b, 2012a, 2012b). The majority of soils in which *I. webberi* occurs have an argillic (i.e., clay) horizon within 19.7 inches (in) (50 centimeters (cm)) of the soil surface (USDA NRCS 2007, 2009a, 2009b, 2012a, 2012b). An argillic horizon is defined as a subsurface horizon with a significantly higher percentage of clay than the overlying soil material (Soil Survey Staff 2010, p. 30). The clay content (percent by weight) of an argillic horizon must be 1.2 times the clay content of an overlying horizon (Soil Survey Staff 1999, p. 31). Agrillic horizons are illuvial, meaning they form below the soil surface, but may be exposed at the surface later due to erosion. Typically there is little or no evidence of illuvial clay movement in soils on young landscapes; therefore, soil scientists have concluded that the formation of an argillic horizon required at least a few thousand years (Soil Survey Staff 1999, p. 29). This argillic horizon represents a time-landscape relationship that can be locally and regionally important because its presence indicates that the geomorphic surface has been relatively stable for a long period of time (Soil Survey Staff 1999, p. 31).

The shallow, clay soils in which *Ivesia webberi* inhabits are very rocky on the surface and tend to be wet in the spring, but dry out as the season progresses (Zamudio 1999, p. 1). The high clay content in the soils creates a

shrink-swell behavior as the soils wet and dry, which helps to ''heave'' rocks in the soil profile to the surface and creates the rocky surface ''pavement'' (Zamudio 1999, p. 1). The unique soils and hydrology of *I. webberi* sites may exclude competition from other species (Zamudio 1999, p. 1; Witham 2000, p. 16). The shrink-swell of the clay zone, which extends into the subsoil, favors perennials with deep taproots or annuals with shallow roots that can complete their life cycle before the surface soil dries out (Zamudio 1999, p. 1; Witham 2000, pp. 16, 20). The root systems of tap-rooted perennial forbs are suited to soil with clay subsoils because the roots branch profusely under the crown, spread laterally, and penetrate the clay B horizon along vertical cleavage planes (Hugie *et al.* 1964, p. 200). The roots are flattened, but unbroken by shrink-swell activity (Hugie *et al.* 1964, p. 200). Early maturing plants, such as *I. webberi,* presumably prefer soils with these heavy clay horizons because of the abundant spring moisture, which essentially saturates the surface horizons with water. Based on the information above, we consider soil with an argillic horizon characterized by shrink-swell behavior to represent a physical or biological feature for *I. webberi.*

Water—*Ivesia webberi* is restricted to sites with soils that are vernally moist (Zamudio 1999a, p. 1; Witham 2000, p. 16). From this finding, we infer that sufficient winter and spring moisture not only contributes to the physical properties of the substrate in which *I. webberi* occurs (i.e., the shrink-swell pattern that contributes to the formation of soil crevices), but also triggers biological responses in *I. webberi,* in the form of stimulating germination, growth, flowering, and seed production. Moisture retention is influenced by site topography as well as soil properties. Therefore, we consider soils that are vernally moist as a physical or biological feature for *I. webberi.*

Light—Although little is known regarding the light requirements of *Ivesia webberi,* inferences are possible from the plant species and the plant community from which *I. webberi* is associated (described under the ''*Space—Plant Community and Competitive Ability''* section above, and the ''*Habitat''* section of the Species Report (Service 2013, pp. 6–7). Generally speaking, co-occurring plant species are short-statured; when assembled into an *Artemisia arbuscula*-perennial bunchgrass-forb community, plants tend to occur widely spaced with intervening patches of rocky, open ground. These factors suggest that *I. webberi* is not shade-tolerant. Therefore, we assume that *I. webberi* is able to persist, at least in part, due to a lack of light competition with taller plants.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Reproduction—Ivesia webberi is a perennial plant species that is not rhizomatous or otherwise clonal. Therefore, like other *Ivesia* species, reproduction in *I. webberi* is presumed to occur primarily via sexual means (i.e., seed production and seedling recruitment). As with most plant species, *I. webberi* does not require separate sites for breeding, rearing, and reproduction other than the locations in which parent plants occur and any area necessary for pollinators and seed dispersal. Seeds of *I. webberi* are relatively large and unlikely to be dispersed by wind or animal vectors; upon maturation of the inflorescence and fruit, seeds are likely to fall to the ground in the immediate vicinity of parent plants (Witham 2000, p. 20). Depressions and crevices in soil frequently serve as seed accumulation or seedling establishment sites in arid ecosystems because they trap seeds and often have higher soil water due to trapped snow and accumulated precipitation (Reichman 1984, pp. 9–10; Eckert *et al.* 1986, pp. 417–420). The cracks of the shrink-swell clay soils which typify *I. webberi* habitat are thought to trap seeds and retain them on-site, and may serve to protect seeds from desiccation from sunlight or wind. Although the long-term viability of these seeds is unknown, *I. webberi* seeds held within these crevices may accumulate and function as a seedbank for *I. webberi* reproduction. Thus, the physical and biological feature of soil with an argillic horizon and shrink-swell behavior identified above under the ''*Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements''* section also has an important reproduction function for *I. webberi.*

Pollination—Pollinators specific to *Ivesia webberi* have not been identified. However, most *Ivesia* species reproduce from seed with insect-mediated pollination occurring between flowers of the same or different plants (Witham 2000, p. 20). Floral visitors have been observed frequenting the flowers of *I. aperta* var. *canina,* which co-occurs with *I. webberi* at one population (USFWS 5; J. Johnson, unpubl. photos 2007). Although these floral visitors can only represent presumed pollinators because they were not observed to be carrying pollen, they represent the best available information regarding possible pollinators of *I. webberi.* Since no single pollinator or group of pollinators is known for *I. webberi,* we are not able to define habitat requirements for *I. webberi* in terms of the distances that particular orders, genera, or species of insect pollinators are known to travel.

Successful transfer of pollen among *Ivesia webberi* populations, therefore, may be inhibited if populations are separated by distances greater than pollinators can travel, or if a pollinator's nesting habitat or behavior is negatively affected (BLM 2012b, p. 2). Some bees such as bumblebees and other social species are able to fly extremely long distances. However, evidence suggests that their habitat does not need to remain contiguous, but it is more important that the protected habitat is large enough to maintain floral diversity to attract these pollinators (BLM 2012b, p. 18). By contrast, most solitary bees remain close to their nest, thus foraging distance tends to be 1,640 ft (500 m) or less (BLM 2012b, p.19). Conservation strategies that strive to maintain not just *I. webberi,* but the range of associated native plant species (many of which are also insect-pollinated) would therefore serve to attract a wide array of insect pollinators, both social and solitary, that may also serve as pollinators of *I. webberi* (BLM 2012b, pp. 5–6, 19). Because annual, nonnative, invasive grasses (such as *Bromus tectorum*) are wind-pollinated, they offer no reward for pollinators; as such nonnative species become established, pollinators are likely to become deterred from visiting areas occupied by *I. webberi.* Therefore, we consider an area of sufficient size with an intact assemblage of native plant species to provide for pollinator foraging and nesting habitat to be a physical or biological feature for *I. webberi.*

Habitats Protected From Disturbance or Representative of the Historical Geographical and Ecological Distributions of the Species

The long-term conservation of *Ivesia webberi* is dependent on several factors, including, but not limited to: Maintenance of areas necessary to sustain natural ecosystem components, functions, and processes (such as light and intact soil hydrology); and sufficient adjacent suitable habitat for vegetative reproduction, population expansion, and pollination.

Disturbance—Soils with a high content of shrink-swell clays, such as those where *Ivesia webberi* is found, often create an unstable soil environment to which this species is presumably adapted (Belnap 2001, p.

183). These micro-scale disturbances are of light to moderate intensity; we are unaware of information to indicate that *I. webberi* has evolved with or is tolerant of moderate to heavy, landscape-scale disturbances. Moderate to heavy soil disturbances such as off-highway vehicle (OHV) use, road corridors, residential or commercial development, and livestock grazing can impact the species and its seedbank through habitat loss, fragmentation, and degradation due to soil compaction and altered soil hydrology (Witham 2000, Appendix 1, p. 1; Bergstrom 2009, pp. 25–26).

Climate change projections in the Great Basin, where *Ivesia webberi* occurs, include increasing temperatures (Chambers and Pellant 2008, p. 29; Finch 2012, p. 4), earlier spring snow runoff (Stewart *et al.* 2005, p. 1152), declines in snowpack (Knowles *et al.* 2006, p. 4557; Mote *et al.* 2005, entire), and increased frequencies of drought and fire (Seager *et al.* 2007, pp. 1181–1184; Littell *et al.* 2009, pp. 1014–1019; Abatzoglou and Kolden 2011, pp. 474–475). Nonnative, invasive plant species and modified fire regimes are already impacting the quality and composition of the *Artemisia arbuscula*–perennial bunchgrass—forb plant community where *I. webberi* occurs (BLM 2012c). We anticipate that climate-related changes expected across the Great Basin, such as altered precipitation and temperature patterns, will accelerate the pace and spatial extent of nonnative plant infestations and altered fire regimes. These patterns of climate change may also decrease survivorship of *I. webberi* by causing physiological stress, altering phenology, and reducing recruitment events and seedling establishment.

Managing for appropriate disturbance regimes (in terms of the type or intensity of disturbance) is difficult, because sources of disturbance are numerous and our ability to predict the effects of multiple, interacting disturbance regimes upon species and their habitats is limited. In this document, we use qualitative terms, but specifically solicit further input on methods or mechanisms to better quantify or describe these measures (see Information Requested section). For the reasons discussed above, we identify areas not subject to moderate to heavy, landscape-scale disturbances, such as impacts from vehicles driven off established roads or trails, development, livestock grazing, and frequent wildfire, to be a physical or biological feature for *I. webberi.*

Primary Constituent Elements for *Ivesia webberi*

According to 50 CFR 424.12(b), we are required to identify the physical or biological features essential to the conservation of *Ivesia webberi* in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to *Ivesia webberi* are:

(i) Suitable Soils and Hydrology:

a. Vernally moist soils with an argillic horizon that shrink and swell upon drying and wetting; these soil conditions are characteristic of known *Ivesia webberi* populations and are likely important in the maintenance of the seedbank and population recruitment.

a. Suitable soils that can include (but are not limited to): Reno—a fine, smectitic, mesic Abruptic Xeric Argidurid; Xman—a clayey, smectitic, mesic, shallow Xeric Haplargids; Aldi—a clayey, smectitic, frigid Lithic Ultic Argixerolls; and Barshaad—a fine, smectitic, mesic Aridic Palexeroll; and

(ii) Topography:

a. Flats, benches, or terraces that are generally above or adjacent to large valleys. Occupied sites vary from slightly concave to slightly convex or gently sloped (0–15°) and occur on all aspects; and

(iii) Elevation:

a. Elevations between 4,475 and 6,237 feet (ft) (1,364 and 1,901 meters (m)); and

(iv) Characterized by a plant community that contains:

a. Open to sparely vegetated areas composed of generally short-statured associated plant species.

b. Presence of appropriate associated species that can include (but are not limited to): *Antennaria dimorpha, Artemisia arbuscula, Balsamorhiza hookeri, Elymus elymoides, Erigeron bloomeri, Lewisia rediviva, Poa secunda,* and *Viola beckwithii.*

c. An intact assemblage of appropriate associated species to attract the floral visitors that may be acting as pollinators of *Ivesia webberi.*

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. All areas proposed for designation as critical habitat contain features that will require some level of management to address the current and future threats. In all units, special management will be required to ensure that the habitat is able to provide for the growth and reproduction of the species.

A detailed discussion of threats to *Ivesia webberi* and its habitat can be found in the *Ivesia webberi* Species Report (Service 2013, pp. 1–46). The features essential to the conservation of *I. webberi* (plant community and competitive ability, and suitable topography, elevation, soils, and hydrology required for the persistence of adults as well as successful reproduction of such individuals and the formation of a seedbank) may require special management considerations or protection to reduce threats. The current range of *I. webberi* is subject to human-caused modifications from the introduction and spread of nonnative invasive species including *Bromus tectorum, Poa bulbosa,* and *Taeniatherum caput-medusae;* modified wildfire regime; increased access and fragmentation of habitat by new roads and OHVs; agricultural, residential, and commercial development; and soil and seedbank disturbance by livestock (Service 2013, pp. 22–32).

Special management considerations or protection are required within critical habitat areas to address these threats. Management activities that could ameliorate these threats include (but are not limited to): Treatment of nonnative, invasive plant species; minimization of OHV access and placement of new roads away from the species and its habitat; regulations or agreements to minimize the effects of development in areas where the species resides; minimization of livestock use or other disturbances that disturb the soil or seeds; and minimization of habitat fragmentation. Where the species occurs on private lands, protection and management could be enhanced by various forms of land acquisition from willing sellers, ranging from the purchase of conservation easements to fee title acquisition. These activities would protect the primary constituent

elements for the species by preventing the loss of habitats and individuals, protecting the plants habitat and soils from undesirable patterns or levels of disturbance, and facilitating the management for desirable conditions, including disturbance regimes.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify occupied areas at the time of listing that contain the features essential to the conservation of the species. If after identifying currently occupied areas, a determination is made that those areas are inadequate to ensure conservation of the species, in accordance with the Act and our implementing regulations at 50 CFR 424.12(e), we then consider whether designating additional areas—outside those currently occupied—are essential for the conservation of the species. We are not currently proposing to designate any areas outside the geographical area presently occupied by the species because its present range is sufficient to ensure the conservation of *Ivesia webberi.*

We delineated the critical habitat unit boundaries for *Ivesia webberi* using the following steps:

(1) In determining what areas were occupied by *Ivesia webberi,* we used polygon data collected by the Bureau of Land Management (BLM 2011, 2012a, unpubl. survey), California Natural Diversity Database (Schoolcraft 1992, 1998, unpubl. survey; Krumm and Clifton 1996, unpubl. survey; Steele and Roe 1996, unpubl. survey), California Department of Fish and Wildlife (Sustain Environmental Inc. 2009, p. III–19), Nevada Natural Heritage Program (Witham 1991, entire; Witham 2000, entire; Morefield 2004, 2005, 2010a, 2010b, unpubl. survey; Picciani 2006, unpubl. survey), U.S. Forest Service, (Duron 1990, entire; Howle and Henault 2009, unpubl. survey; Howle and Chardon 2011a, 2011b, 2011c, unpubl. survey) and consulting firms (Wood Rogers 2007, Tables 2 and 3, pp. 5–6) to map specific locations of *I. webberi* using ArcMap 10.1. These locations were classified into discrete populations based on mapping standards devised by NatureServe and its network of Natural Heritage Programs (NatureServe 2004, entire).

(2) We extended the boundaries of the polygon defining each population or subpopulation by 1,640 ft (500 m) to provide for sufficient pollinator habitat. This creates an area that is large enough to maintain flora diversity that would protect nesting areas of solitary pollinator species, while creating a large enough patch of flora diversity to attract social, wide-ranging pollinator species (as described above under the ''*Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring*'' section; BLM 2012b, p. 19).

(3) We then removed areas not containing the physical or biological features essential to the conservation of *I. webberi* within the 1,640-ft-wide (500-m-wide) area surrounding each population. We used a habitat model to identify areas lacking physical or biological features. The habitat model was developed by comparing occupied areas and the known environmental variables of these areas, such as elevation, slope, and soil type that we determined to be physical and biological features for this species. The environmental variables with the highest predictive ability influenced the habitat the model identified. Finally, we used ESRI ArcGIS Imagery Basemap satellite imagery to exclude forested areas within the areas the model selected because this is not the vegetation type that is a physical and biological feature for *I. webberi.*

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for *Ivesia webberi.* The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are proposing for designation of critical habitat lands that we have determined are occupied at the time of listing and contain sufficient elements of physical or biological features to support life-history processes essential for the conservation of the species.

Units are proposed for designation based on sufficient elements of physical or biological features being present to support *Ivesia webberi* life-history processes. Some units contained all of the identified elements of physical or biological features and supported multiple life-history processes. Some segments contained only some elements of the physical or biological features necessary to support *I. webberi's* particular use of that habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0080, on our Internet site *http://www.fws.gov/nevada/,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Proposed Critical Habitat Designation

We are proposing 16 units as critical habitat for *Ivesia webberi;* 2 of these units have subunits. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for *I. webberi.* The 18 areas we propose as critical habitat are: (1) Sierra Valley, (2) Constantia, (3) East of Hallelujah Junction Wildlife Area (HJWA), Evans Canyon, (4) Hallelujah Junction Wildife Area (WA), (5) subunit—Dog Valley Meadow and subunit—Upper Dog Valley, (6) White Lake Overlook, (7) subunit—Mules Ear Flat and subunit—Three Pine Flat and Jeffrey Pine Saddle, (8) Ivesia Flat, (9) Stateline Road 1, (10) Stateline Road 2, (11) Hungry Valley, (12) Black Springs, (13) Raleigh Heights, (14) Dutch Louie Flat, (15) The Pines Powerline, and (16) Dante Mine Road. Table 1 lists the proposed critical habitat units and subunits and the area of each.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR *Ivesia webberi*

[Area estimates reflect all land within the critical habitat boundary]

CH Unit and subunit	Population (USFWS)	Unit or subunit name	Federally owned land acres (hectares)	State or local Government owned land acres (hectare)	Privately owned land acres (hectares)	Total area acres (hectares)
1	1	Sierra Valley	51 (21)	44 (18)	179 (73)	274 (111)
2	2	Constantia	155 (63)	.....	.....	155 (63)
3	3	East of HJWA, Evans Canyon	22 (9)	100 (41)	.....	122 (49)
4	4	Hallelujah Junction WA	.....	69 (28)	.....	69 (28)
5:						
5a	5	Dog Valley Meadow	386 (156)	.....	.....	386 (156)
5b	5	Upper Dog Valley	12 (5)	.....	17 (7)	29 (12)
6	6	White Lake Overlook	98 (40)	.....	11 (4)	109 (44)
7:						
7a	7	Mules Ear Flat	31 (13)	.....	34 (14)	65 (27)
7b	7	Three Pine Flat; Jeffrey Pine Saddle.	3 (1)	.....	65 (26)	68 (27)
8	8	Ivesia Flat	62 (25)	.....	.....	62 (25)
9	9	Stateline Road 1	125 (50)	.....	7 (3)	132 (53)
10	10	Stateline Road 2	65 (26)	.....	.....	65 (26)
11	11	Hungry Valley	56 (23)	.....	.....	56 (23)
12	12	Black Springs	116 (47)	.....	24 (10)	140 (57)
13	13	Raleigh Heights	163 (66)	.....	14 (6)	177 (72)
14	14	Dutch Louie Flat	11 (4)	.....	46 (19)	56 (23)
15	15	The Pines Powerline	.....	.....	32 (13)	32 (13)
16	16	Dante Mine Road	10 (4)	.....	4 (2)	14 (6)
Total	.....	.....	1,365 (552)	214 (86)	432 (175)	2,011 (814)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for *Ivesia webberi,* below.

Unit 1: Sierra Valley

Unit 1 consists of 274 ac (111 ha) of Federal, State, and private lands. This Unit is located near the junction of State Highway 49 and County Highway A24 in Plumas County, California. Nineteen percent of this Unit is on Federal lands managed by the BLM, 16 percent is on California State land, and 65 percent is on private lands. This Unit is currently occupied and is the most western occupied Unit within the range of *Ivesia webberi.* The Sierra Valley Unit is important to the recovery of *I. webberi* because it supports 44.8 ac (18.1 ha), or nearly one-third (27.2 percent) of all habitat (165 ac (66.8 ha)) that is occupied by *I. webberi* across the species' range. Threats to *I. webberi* in this Unit include nonnative, invasive species, wildfire, OHV use, roads, livestock grazing, and any other forms of vegetation or ground-disturbing activities. While these lands currently have the physical and biological features essential to the conservation of *I. webberi,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 2: Constantia

Unit 2 consists of 155 ac (63 ha) of Federal land. This unit is located east of U.S. Highway 395, southeast of the historic town of Constantia, in Lassen County, California. One hundred percent of this Unit is on Federal lands managed by the BLM. This Unit is currently occupied and is the most northern occupied Unit within the range of *Ivesia webberi.* The Constantia Unit is important to the recovery of *I. webberi* primarily because it represents one of relatively few locations within the Great Basin where the species is known to exist. Given the increasing prevalence of both site-specific and landscape-scale threats operating throughout this region and specifically within areas occupied

by *I. webberi* (Service 2013, entire), this location and most others where the species occurs confer redundancy within the species' distribution, thereby buffering the species against the risk of extirpation likely to result from these threats or other less-predicable stochastic events. Not a lot is known about the current condition of *I. webberi* and its habitat at this site, however, wildfire and any other forms of vegetation or ground-disturbing activities are threats to *I. webberi* in this Unit. While these lands currently have the physical and biological features essential to the conservation of *I. webberi,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 3: East of Hallelujah Junction Wildlife Area (HJWA)—Evans Canyon

Unit 3 consists of 122 ac (49 ha) of Federal and State lands. This Unit is located east of U.S. Highway 395 on the border of HJWA in Lassen County, California. Eighty-two percent of this Unit is on California State land managed as the HJWA and 18 percent is on Federal land managed by the BLM. This Unit is currently occupied and is approximately 1.6 mi (2.6 km) away from Unit 4, which may allow for social pollinator dispersal between these two Units. Additionally, this is the only place where *Ivesia webberi* is found as a co-dominant in an *Artemisia tridentata* Nutt. (big sagebrush) community instead of an *Artemisia arbuscula* community. The perennial bunchgrass and forb components of the *Artemisia tridentata* community found within this Unit are the same as those occurring in locations where *A. arbuscula* is co-dominant with *I. webberi.* The East of HJWA—Evans Canyon Unit is important to the recovery of *I. webberi* primarily because it represents one of relatively few locations within the Great Basin where the species is known to exist. Given the increasing prevalence of both site-specific and landscape-scale threats operating throughout this region and specifically within areas occupied by *I. webberi* (Service 2013, entire), this location and most others where the species occurs confer redundancy within the species' distribution, thereby buffering the species against the risk of extirpation likely to result from these threats or other less-predicable stochastic events. Wildfire and any other forms of vegetation or ground-disturbing activities are threats to *I. webberi* in this Unit. While these lands currently have the physical and biological features essential to the conservation of *I. webberi,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 4: Hallelujah Junction Wildlife Area (HJWA)

Unit 4 consists of 69 ac (28 ha) of State lands. This Unit is located west of U.S. Highway 395 within HJWA in Sierra County, California. One hundred percent of this Unit is on California State land managed as the HJWA. This Unit is currently occupied and is approximately 1.6 mi (2.6 km) away from Unit 3, which may allow for social pollinator dispersal between these Units. The HJWA Unit is important to the recovery of *I. webberi* primarily because it represents one of relatively few locations within the Great Basin where the species is known to exist. Given the increasing prevalence of both site-specific and landscape-scale threats operating throughout this region and specifically within areas occupied by *I. webberi* (Service 2013, entire), this location and most others where the species occurs confer redundancy within the species' distribution, thereby buffering the species against the risk of extirpation likely to result from these threats or other less-predicable stochastic events. Wildfire and any other forms of vegetation or ground-disturbing activities are threats to *I. webberi* in this Unit. While these lands currently have the physical and biological features essential to the conservation of *I. webberi,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 5: Subunit 5a—Dog Valley Meadow and Subunit 5b—Upper Dog Valley

Subunit 5a—Dog Valley Meadow

Subunit 5a consists of 386 ac (156 ha) of Federal lands. This Subunit is located east of Long Valley Road in Dog Valley in Sierra County, California. One hundred percent of this Subunit is on Federal lands managed by the U.S. Forest Service (USFS). This Unit is currently occupied and is 0.5 mi (0.8 km) away from Subunit 5b, which may allow for social pollinator dispersal between these Subunits. The Dog Valley Meadow Unit is important to the recovery of *Ivesia webberi* because it supports 71.58 ac (28.97 ha), or nearly half (43.5 percent) of all habitat (165 ac (66.8 ha)) that is occupied by *I. webberi* across the species' range and 100,000 plants, or approximately 2 to 10 percent (i.e., dependent on which population estimate range is used for the calculation) of individuals known to exist across the species' range (Service 2013, pp. 15–16). Threats to *I. webberi* in this Subunit include nonnative, invasive plant species, wildfire, OHV and other recreational use, and any other forms of vegetation or ground-disturbing activities. Additionally, this Subunit historically was grazed, but the grazing allotment currently is vacant (Service 2013, p. 16). While these lands currently have the physical and biological features essential to the conservation of *I. webberi,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Subunit. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Subunit 5b—Upper Dog Valley

Subunit 5b consists of 29 ac (12 ha) of Federal and private lands. This Subunit is located west of Long Valley Road and south of the Dog Valley campground in Dog Valley in Sierra County, California. Forty-one percent of this Subunit is on Federal lands managed by the USFS and 59 percent is on private lands. This Unit is currently occupied and is 0.5 mi (0.8 km) away from Subunit 5a, which may allow for social pollinator dispersal between these Subunits. The Upper Dog Valley Subunit is important to the recovery of *I. webberi* primarily because it represents one of relatively few locations within the Great Basin where the species is known to exist. Given the increasing prevalence of both site-specific and landscape-scale threats operating throughout this region and specifically within areas occupied by *I. webberi* (Service 2013, entire), this location and most others where the species occurs confer redundancy within the species' distribution, thereby buffering the species against the risk of extirpation likely to result from these threats or other less-predicable stochastic events. Threats to *I. webberi* in this Subunit include nonnative, invasive plant species, wildfire, OHV use, and any other forms of vegetation or ground-disturbing activities. Additionally, this Subunit historically

was grazed, but the grazing allotment is currently vacant (Service 2013, p. 16). While these lands currently have the physical and biological features essential to the conservation of *I. webberi,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Subunit. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 6: White Lake Overlook

Unit 6 consists of 109 ac (44 ha) of Federal and private lands. This Unit is located north of Long Valley Road in Sierra County, California. Ninety percent of this Unit is on Federal lands managed by the USFS and 10 percent is on private lands. This Unit is currently occupied and is 1 mi (1.6 km) or less away from Units 7 and 9, which may allow for social pollinator dispersal between these Units. The White Lake Overlook Unit is important to the recovery of *Ivesia webberi* because it supports 13.56 ac (5.49 ha) or 8.2 percent of all habitat (165 ac (66.8 ha)) that is occupied by *I. webberi* across the species range. Threats to *I. webberi* in this Unit include wildfire and any other forms of vegetation or ground-disturbing activities. While these lands currently have the physical and biological features essential to the conservation of *I. webberi,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 7: Subunit 7a—Mules Ear Flat and Subunit 7b—Three Pine Flat and Jeffrey Pine Saddle

Subunit 7a—Mules Ear Flat

Subunit 7a consists of 65 ac (27 ha) of Federal and private lands. This Subunit is located west of the California-Nevada border and southeast of Long Valley Road in Sierra County, California. Forty-eight percent of this Subunit is on Federal land managed by the USFS, and 52 percent is on private lands. This Subunit is currently occupied and is 1 mi (1.6 km) or less away from Units 6 and 9, which may allow for social pollinator dispersal between these Units. The Mules Ear Flat Subunit is important to the recovery of *I. webberi* primarily because it represents one of relatively few locations within the Great Basin where the species is known to exist. Given the increasing prevalence of both site-specific and landscape-scale threats operating throughout this region and specifically within areas occupied by *I. webberi* (Service 2013, entire), this location and most others where the species occurs confer redundancy within the species' distribution, thereby buffering the species against the risk of extirpation likely to result from these threats or other less-predicable stochastic events. Threats to *I. webberi* in this Subunit include nonnative, invasive plant species, wildfire, OHV use, roads, and any other forms of vegetation or ground-disturbing activities. Additionally, this Subunit historically was grazed, but the grazing allotment currently is vacant (Service 2013, p. 17). While these lands currently have the physical and biological features essential to the conservation of *I. webberi,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Subunit 7b—Three Pine Flat and Jeffrey Pine Saddle

Subunit 7b consists of 68 ac (27 ha) of Federal and private lands. This Subunit is located east of the California-Nevada border in Washoe County, Nevada. Four percent of this Subunit is on Federal lands managed by the USFS, and 96 percent is on private lands. This Subunit is currently occupied and is 1 mi (1.6 km) or less away from Units 6, 8, and 9, which may allow for social pollinator dispersal between these Units. The Three Pine Flat and Jeffery Pine Saddle Subunit is important to the recovery of *I. webberi* primarily because it represents one of relatively few locations within the Great Basin where the species is known to exist. Given the increasing prevalence of both site-specific and landscape-scale threats operating throughout this region and specifically within areas occupied by *I. webberi* (Service 2013, entire), this location and most others where the species occurs confer redundancy within the species' distribution, thereby buffering the species against the risk of extirpation likely to result from these threats or other less-predicable stochastic events. Threats to *I. webberi* in this Subunit include nonnative, invasive plant species, wildfire, OHV use, roads, and any other forms of vegetation or ground-disturbing activities. Additionally, this Subunit historically was grazed, but the grazing allotment currently is vacant (Service 2013, p. 17). While these lands currently have the physical and biological features essential to the conservation of *I. webberi,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 8: Ivesia Flat

Unit 8 consists of 62 ac (25 ha) of Federal land. This Unit is located south of U.S. Highway 395 in Washoe County, NV. One hundred percent of this Unit is on Federal land managed by the USFS. This Unit is currently occupied and is 1 mi (1.6 km) away from Subunit 7b, which may allow for social pollinator dispersal between these Units. The Ivesia Flat Unit is important to the recovery of *Ivesia webberi* because it supports 100,000 plants (Service 2013, p. 17), or approximately between 2 and 10 percent (i.e., dependent on which population estimate range is used for the calculation) of individuals known to exist across the species' range. Threats to *I. webberi* in this Unit include nonnative, invasive plant species, wildfire, OHV use, roads, and any other forms of vegetation or ground-disturbing activities. Additionally, this Unit historically was grazed, but the grazing allotment currently is vacant (Service 2013, p. 17). While these lands currently have the physical and biological features essential to the conservation of *I. webberi,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 9: Stateline Road 1

Unit 9 consists of 132 ac (53 ha) of Federal and private lands. This Unit is located along the California-Nevada border in Sierra County, California, and Washoe County, Nevada. Ninety-four percent of this Unit is on Federal land managed by the USFS, and 6 percent is on private lands. This Unit is currently occupied and is 1 mi (1.6 km) or less away from Units 6, 7, and 10, which may allow for social pollinator dispersal between these Units. The Stateline Road 1 Unit is important to the recovery of *I. webberi* primarily because it represents one of relatively few locations within the Great Basin where the species is known to exist. Given the increasing prevalence of both site-specific and landscape-scale threats operating

throughout this region and specifically within areas occupied by *I. webberi* (Service 2013, entire), this location and most others where the species occurs confer redundancy within the species' distribution, thereby buffering the species against the risk of extirpation likely to result from these threats or other less-predicable stochastic events. Threats to *I. webberi* in this Unit include nonnative, invasive plant species, wildfire, development, and any other forms of vegetation or ground-disturbing activities. Additionally, this Unit historically was grazed, but the grazing allotment currently is vacant (Service 2013, p. 18). While these lands currently have the physical and biological features essential to the conservation of *I. webberi,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 10: Stateline Road 2

Unit 10 consists of 65 ac (26 ha) of Federal land. This Unit is located along the California-Nevada border in Sierra County, California, and Washoe County, Nevada. One hundred percent of this Unit is on Federal land managed by the USFS. This Unit is currently occupied and is less than 1 mi (1.6 km) away from Unit 9, which may allow for social pollinator dispersal between these Units. The Stateline Road 2 Unit is important to the recovery of *I. webberi* primarily because it represents one of relatively few locations within the Great Basin where the species is known to exist. Given the increasing prevalence of both site-specific and landscape-scale threats operating throughout this region and specifically within areas occupied by *I. webberi* (Service 2013, entire), this location and most others where the species occurs confer redundancy within the species' distribution, thereby buffering the species against the risk of extirpation likely to result from these threats or other less-predicable stochastic events. Threats to *I. webberi* in this Unit include nonnative, invasive plant species, wildfire, development, and any other forms of vegetation or ground-disturbing activities. Additionally, this Unit historically was grazed, but the grazing allotment currently is vacant (Service 2013, p. 18). While these lands currently have the physical and biological features essential to the conservation of *I. webberi,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 11: Hungry Valley

Unit 11 consists of 56 ac (23 ha) of Federal land. This Unit is located west of Eagle Canyon Drive in Washoe County, Nevada. One hundred percent of this Unit is on Federal land managed by the BLM. This Unit is currently occupied and is the eastern most occupied Unit within the range of *Ivesia webberi.* The Hungry Valley Unit is important to the recovery of *I. webberi* primarily because it represents one of relatively few locations within the Great Basin where the species is known to exist. Given the increasing prevalence of both site-specific and landscape-scale threats operating throughout this region and specifically within areas occupied by *I. webberi* (Service 2013, entire), this location and most others where the species occurs confer redundancy within the species' distribution, thereby buffering the species against the risk of extirpation likely to result from these threats or other less-predicable stochastic events. Threats to *I. webberi* in this Unit include nonnative, invasive plant species, wildfire, OHV use and other recreational use, roads, livestock grazing, and any other forms of vegetation or ground-disturbing activities. While these lands currently have the physical and biological features essential to the conservation of *I. webberi,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 12: Black Springs

Unit 12 consists of 140 ac (57 ha) of Federal and private lands. This Unit is located northwest of North Virginia Street and south of U.S. Highway 395 in Washoe County, Nevada. Eighty-three percent of this Unit is on Federal land managed by the USFS, and 17 percent is on private lands. This Unit is currently occupied and is approximately 1 mi (1.6 km) away from Unit 13, which may allow for social pollinator dispersal between these Units. The Black Springs Unit is important to the recovery of *I. webberi* primarily because it represents one of relatively few locations within the Great Basin where the species is known to exist. Given the increasing prevalence of both site-specific and landscape-scale threats operating throughout this region and specifically within areas occupied by *I. webberi* (Service 2013, entire), this location and most others where the species occurs confer redundancy within the species' distribution, thereby buffering the species against the risk of extirpation likely to result from these threats or other less-predicable stochastic events. Threats to *I. webberi* in this Unit include nonnative, invasive plant species, wildfire, OHV use, roads, and any other forms of vegetation or ground-disturbing activities. Additionally, this Unit historically was grazed, but the grazing allotment currently is vacant (Service 2013, p. 18). While these lands currently have the physical and biological features essential to the conservation of *I. webberi,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 13: Raleigh Heights

Unit 13 consists of 177 ac (72 ha) of Federal and private lands. This Unit is located northwest of North Virginia Street and south of US Highway 395 in Washoe County, Nevada. Ninety-two percent of this Unit is on Federal land managed by the USFS, and 8 percent is on private lands. This Unit is currently occupied and is approximately 1 mi (1.6 km) away from Unit 12, which may allow for social pollinator dispersal between these Units. The Raleigh Heights Unit is important to the recovery of *Ivesia webberi* because it supports between 100,000 to 4,000,000 plants (Service 2013, p. 19), or approximately 10 to 79.5 percent (i.e., dependent on which population estimate range is used for the calculation) of individuals known to exist across the species range. Threats to *I. webberi* in this Unit include nonnative, invasive plant species, wildfire, OHV use, roads, and any other forms of vegetation or ground-disturbing activities. While these lands currently have the physical and biological features essential to the conservation of *I. webberi,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 14: Dutch Louie Flat

Unit 14 consists of 56 ac (23 ha) of Federal and private lands. This Unit is located southwest of South McCarran Boulevard in Washoe County, Nevada. Nineteen percent of this Unit is on Federal lands managed by the USFS and 81 percent is on private lands. This Unit it currently occupied and is approximately 0.5 mi (0.8 km) away from Unit 15, which may allow for social pollinator dispersal between these Units. The Dutch Louie Flat Unit is important to the recovery of *Ivesia webberi* because it supports between 600,000 to 693,795 plants (Service 2013, p. 19), or approximately 14 to 61 percent (i.e., dependent on which population estimate range is used for the calculation) of individuals known to exist across the species range. Threats to *I. webberi* in this Unit include nonnative, invasive plant species, wildfire, OHV and other recreational use, roads, development, and any other forms of vegetation or ground-disturbing activities. While these lands currently have the physical and biological features essential to the conservation of *I. webberi,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 15: The Pines Powerline

Unit 15 consists of 32 ac (13 ha) of private lands. This Unit is located southwest of South McCarran Boulevard in Washoe County, Nevada. One hundred percent of this Unit is on private lands. This Unit is currently occupied and is approximately 0.5 mi (0.8 km) away from Unit 14, which may allow for social pollinator dispersal between these Units. The Pines Powerline Unit is important to the recovery of *I. webberi* primarily because it represents one of relatively few locations within the Great Basin where the species is known to exist. Given the increasing prevalence of both site-specific and landscape-scale threats operating throughout this region and specifically within areas occupied by *I. webberi* (Service 2013, entire), this location and most others where the species occurs confer redundancy within the species' distribution, thereby buffering the species against the risk of extirpation likely to result from these threats or other less-predicable stochastic events. Threats to *I. webberi* in this Unit include nonnative, invasive plant species, wildfire, OHV and other recreational use, roads, development, and any other forms of vegetation or ground-disturbing activities. While these lands currently have the physical and biological features essential to the conservation of *I. webberi,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 16: Dante Mine Road

Unit 16 consists of 14 ac (6 ha) of Federal and private lands. This Unit is located east of US Highway 395 in Douglas County, Nevada. Seventy-three percent of this Unit is on Federal land managed by the BLM, and 27 percent is on private lands. This Unit is currently occupied and is the most southern occupied Unit within the range of *Ivesia webberi.* The Dante Mine Road Unit is important to the recovery of *I. webberi* primarily because it represents one of relatively few locations within the Great Basin where the species is known to exist. Given the increasing prevalence of both site-specific and landscape-scale threats operating throughout this region and specifically within areas occupied by *I. webberi* (Service 2013, entire), this location and most others where the species occurs confer redundancy within the species' distribution, thereby buffering the species against the risk of extirpation likely to result from these threats or other less-predicable stochastic events. Threats to *I. webberi* in this Unit include nonnative, invasive plant species, wildfire, roads, development, and any other forms of vegetation or ground-disturbing activities. While these lands currently have the physical and biological features essential to the conservation of *I. webberi,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we

provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for *Ivesia webberi.* As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the *Ivesia webberi.* These activities include, but are not limited to:

(1) Actions that would lead to the destruction or alteration of plants, their seedbank, or their habitat; or actions that destroy or result in continual or excessive disturbance of the clay soils where *Ivesia webberi* is found. Such activities could include, but are not limited to: Activities associated with road construction and maintenance; excessive OHV use; activies associated with commercial and residential development including roads and associated infrastructure; utility corridors or infrastructure; and excessive livestock grazing. These activities could lead to the loss of individuals, reduce plant numbers by prohibiting recruitment, remove the seedbank, fragment the habitat, introduce nonnative, invasive species, and alter the soil such that important shrink and swell processes no longer occur.

(2) Actions that would result in the loss of pollinators or their habitat, such that reproduction could be diminished. Such activities could include, but are not limited to: Destroying ground nesting habitat; habitat fragmentation that prohibits pollinator movement from one area to the next; spraying pesticides that would kill pollinators; and eliminating other plant species on which pollinators are reliant on for floral resources (this could include the replacement of native forb species with nonnative, invasive annual grasses, which do not provide floral resources for pollinators). These activities could result in reduced reproduction, fruit production, and recruitment in *Ivesia webberi.*

(3) Actions that would result in excessive plant competition at *Ivesia webberi* populations. These activities could include, but are not limited to, using highly competitive species in restoration efforts or creating disturbances that allow nonnative, invasive species such as *Bromus tectorum, Poa bulbosa,* and *Taeniatherum caput-medusae.* These activities could cause *I. webberi* to be outcompeted and subsequently either lost or reduced in numbers of individuals.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors. Many of the units, as proposed, include private lands. Federal lands with special use permits for development, grazing permits, and recreational uses are also included. State parcels are included where hunting or recreational activities occur. These areas and activities will be evaluated in a draft economic analysis.

During the development of a final designation, we will consider economic impacts based on information in our economic analysis, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for *Ivesia webberi* are not owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not intending to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for *Ivesia webberi,* and the proposed designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from this proposed critical habitat designation. Accordingly, the Secretary does not intend to exercise his discretion to exclude any areas from the final designation based on other relevant impacts.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, and analyses. We have invited these peer reviewers to comment during this public comment period.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we will consider the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant

to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be *both* significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

Under the RFA, as amended, and following recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself, and not the potential impacts to indirectly affected entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the Agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, our position is that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service may certify that the proposed critical habitat rule will not have a significant economic impact on a substantial number of small entities.

We acknowledge, however, that in some cases, third-party proponents of the action subject to permitting or funding may participate in a section 7 consultation, and thus may be indirectly affected. We believe it is good policy to assess these impacts if we have sufficient data before us to complete the necessary analysis, whether or not this analysis is strictly required by the RFA. While this regulation does not directly regulate these entities, in our draft economic analysis we will conduct a brief evaluation of the potential number of third parties participating in consultations on an annual basis in order to ensure a more complete examination of the incremental effects of this proposed rule in the context of the RFA.

In conclusion, we believe that, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of critical habitat will directly regulate only Federal agencies, which are not by definition small business entities. And as such, we certify that, if promulgated, this designation of critical habitat would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required. However, though not necessarily required by the RFA, in our draft economic analysis for this proposal, we will consider and evaluate the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use because of the small area of proposed critical habitat (total area of 2,011 ac (814 ha)) and lack of known significant energy supplies within the proposed critical habitat. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families With Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments and, as such, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference With Constitutionally Protected Private Property Rights''), this rule is not anticipated to have significant takings implications. As discussed above, the designation of critical habitat affects only Federal actions. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. Due to current public knowledge of the species protections and the prohibition against take of the species both within and outside of the proposed areas, we do not anticipate that property values will be affected by the critical habitat designation. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted, and prepare a Takings Implication Assessment.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we request information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in California and Nevada. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We have determined that there are no tribal lands occupied by *Ivesia webberi* at the time of listing that contain the features essential for conservation of the species, and no tribal lands that are unoccupied by the *I. webberi* that are essential for the conservation of the species. Therefore, we are not proposing to designate critical habitat for *I. webberi* on tribal lands.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly

written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rulemaking are the staff members of the Nevada Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245; unless otherwise noted.

■ 2. In § 17.96, amend paragraph (a) by adding an entry for ''*Ivesia webberi* (*Webber's ivesia*),'' in alphabetical order under Family Rosaceae, to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Rosaceae: *Ivesia webberi* (Webber's ivesia)

(1) Critical habitat units are depicted for Plumas, Lassen, and Sierra Counties, California, and Washoe and Douglas Counties, Nevada, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of *Ivesia webberi* consist of four components:

(i) *Plant community.*

(A) Open to sparsely vegetated areas composed of generally short-statured associated plant species.

(B) Presence of appropriate associated species that can include (but are not limited to): *Antennaria dimorpha, Artemisia arbuscula, Balsamorhiza hookeri, Elymus elymoides, Erigeron bloomeri, Lewisia rediviva, Poa secunda,* and *Viola beckwithii.*

(C) An intact assemblage of appropriate associated species to attract the floral visitors that may be acting as pollinators of *Ivesia webberi.*

(ii) *Topography.*

Flats, benches, or terraces that are generally above or adjacent to large valleys. Occupied sites vary from slightly concave to slightly convex or gently sloped (0–15°) and occur on all aspects.

(iii) *Elevation.*

Elevations between 4,475 and 6,237 ft (1,364 and 1,901 m).

(iv) *Suitable soils and hydrology.*

(A) Vernally moist soils with an argillic horizon that shrink and swell upon drying and wetting; these soil conditions are characteristic of known *Ivesia webberi* populations and are likely important in the maintenance of the seedbank and population recruitment.

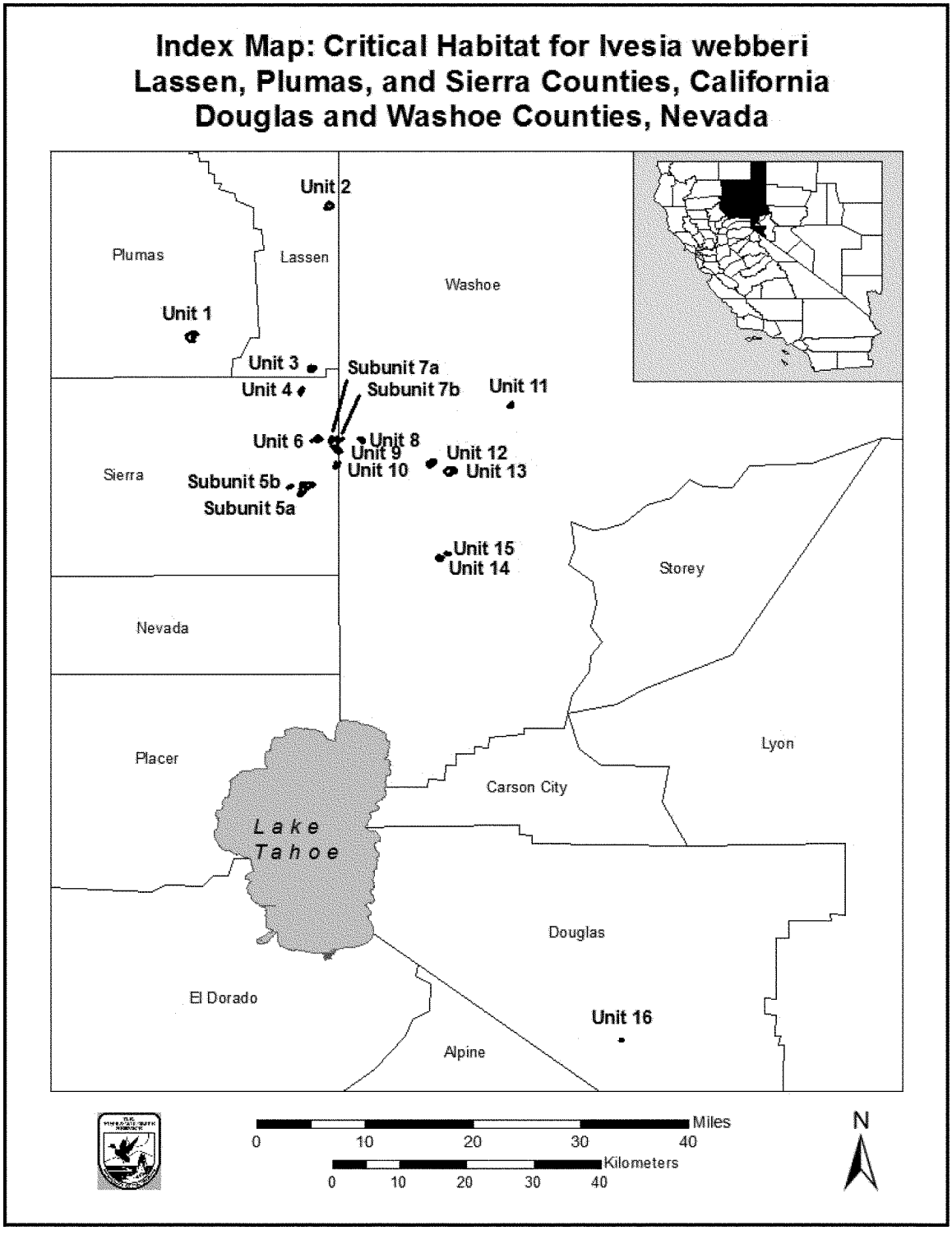
(B) Suitable soils that can include (but are not limited to): Reno—a fine, smectitic, mesic Abruptic Xeric Argidurid; Xman—a clayey, smectitic, mesic, shallow Xeric Haplargids; Aldi—a clayey, smectitic, frigid Lithic Ultic Argixerolls; and Barshaad—a fine, smectitic, mesic Aridic Palexeroll.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [INSERT EFFECTIVE DATE OF FINAL RULE].

(4) *Critical habitat map units.* Data layers defining map units were created on the base of both satellite imagery (ESRI ArcGIS Imagery Basemap) as well as USGS geospatial quadrangle maps and were mapped using NAD 83 Universal Transverse Mercator (UTM), zone 11N coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site, (*http://www.fws.gov/nevada/*), *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0080 and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) **Note:** Index map follows:

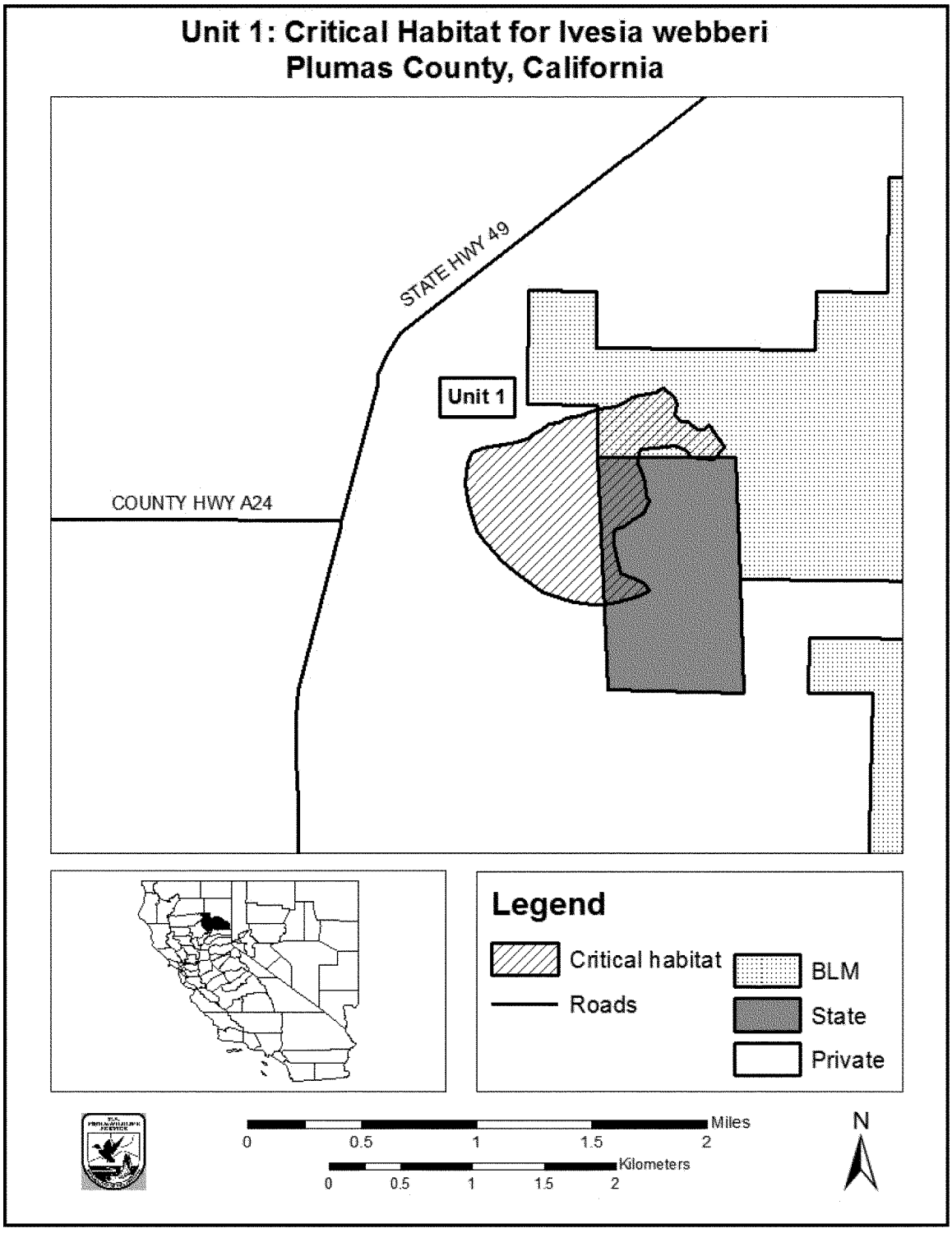
BILLING CODE 4310–55–P


Index Map: Critical Habitat for Ivesia webberi
Lassen, Plumas, and Sierra Counties, California
Douglas and Washoe Counties, Nevada
Unit 2
Plumas
Lassen
Washoe
Unit 1
Unit 3
Subunit 7a
Unit 4
Subunit 7b
Unit 11
Unit 6
Unit 8
Unit 9
Unit 12
Sierra
Unit 10
Unit 13
Subunit 5b
Subunit 5a
Unit 15
Unit 14
Storey
Nevada
Placer
Lyon
Carson City
Lake Tahoe
Douglas
El Dorado
Unit 16
Alpine
Miles
0 10 20 30 40
Kilometers
0 10 20 30 40
N

(6) Unit 1, Sierra Valley: Critical habitat for *Ivesia webberi,* Plumas County, California.

(i) Unit 1 includes 274 ac (111 ha).

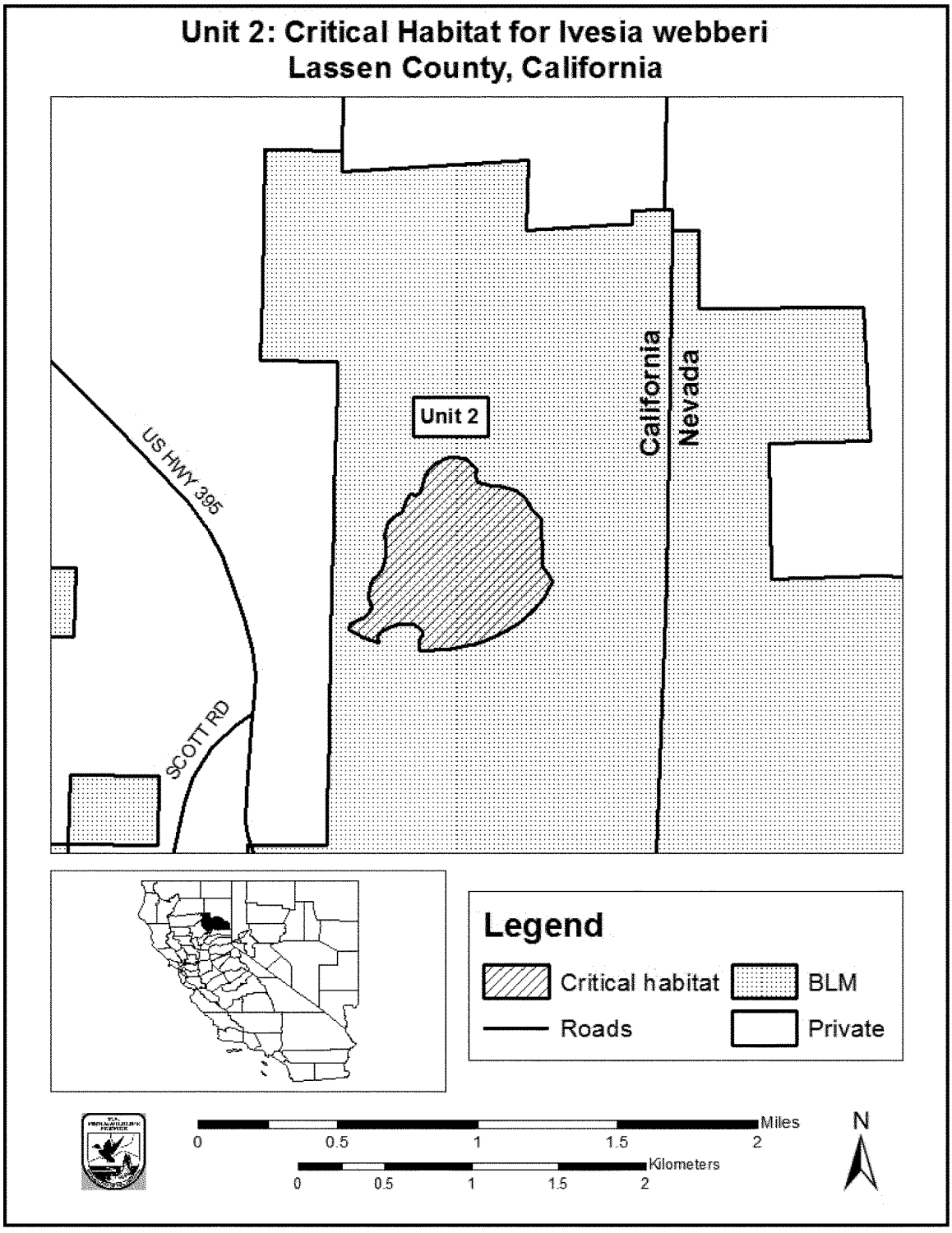
(ii) **Note:** A map of Unit 1 follows:



(7) Unit 2, Constantia: Critical habitat for *Ivesia webberi,* Lassen County, California.

(i) Unit 2 includes 155 ac (63 ha).

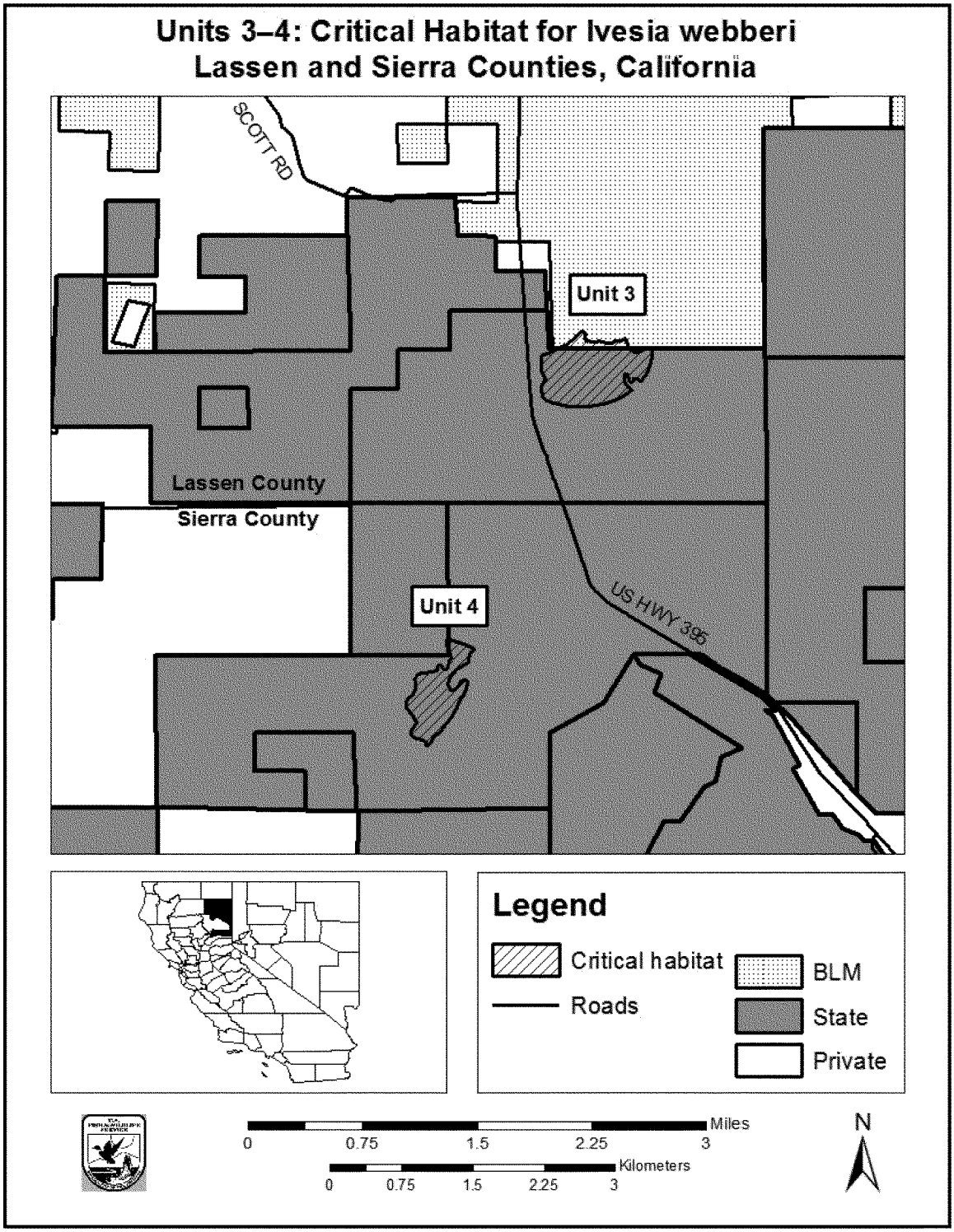
(ii) **Note:** A map of Unit 2 follows:



(8) Unit 3, East of HJWA—Evans Canyon and Unit 4, Hallelujah Junction WA: Critical habitat for *Ivesia webberi,* Lassen and Sierra Counties, California.

(i) Unit 3 includes 122 ac (49 ha) and Unit 4 includes 69 ac (28 ha).

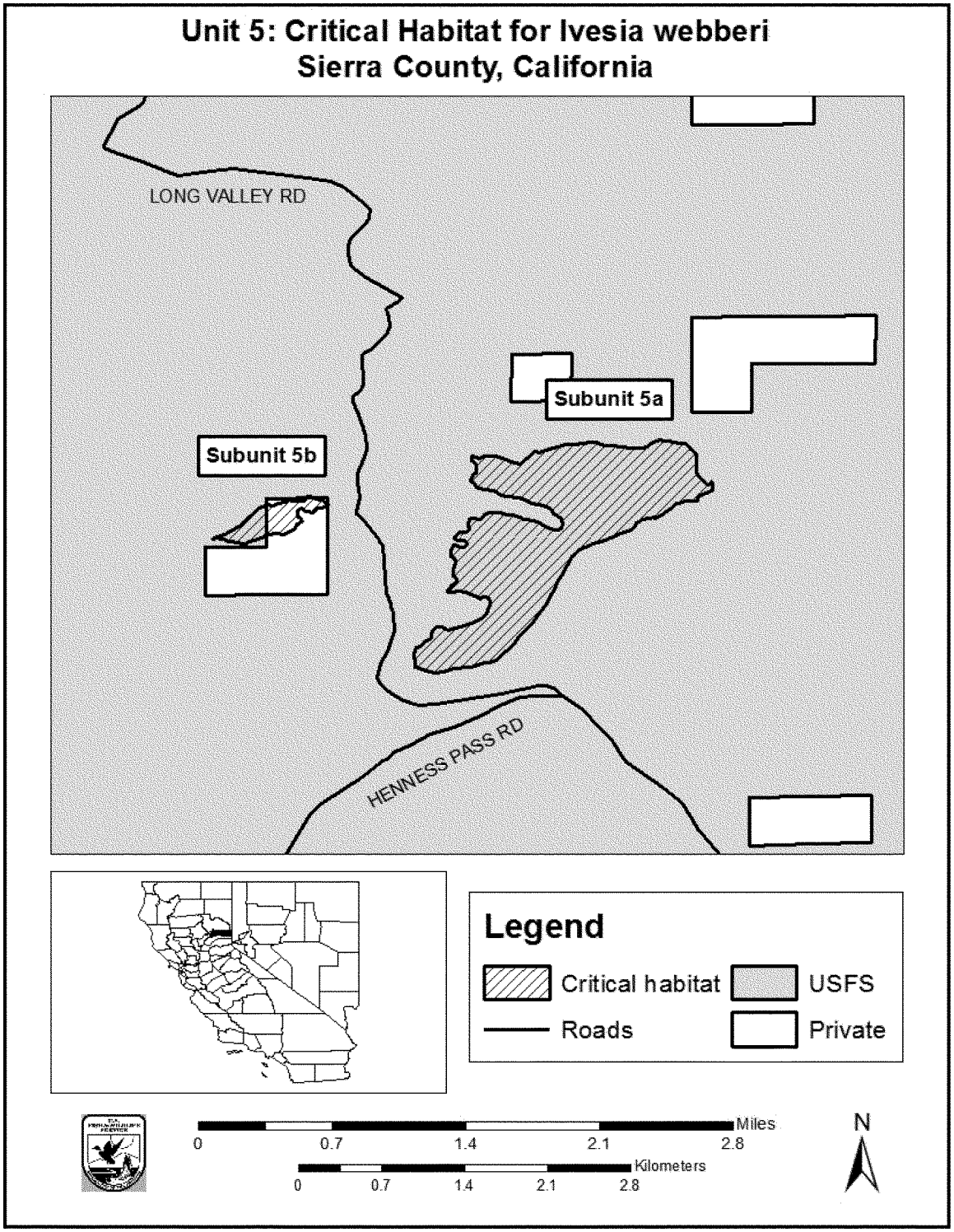
(ii) **Note:** A map of Units 3 and 4 follows:



(9) Unit 5, Subunit 5a, Dog Valley Meadow; and Subunit 5b, Upper Dog Valley: Critical habitat for *Ivesia webberi,* Sierra County, California.

(i) Subunit 5a includes 386 ac (156 ha) and Subunit 5b includes 29 ac (12 ha). Combined, Unit 5 includes 415 ac (168 ha).

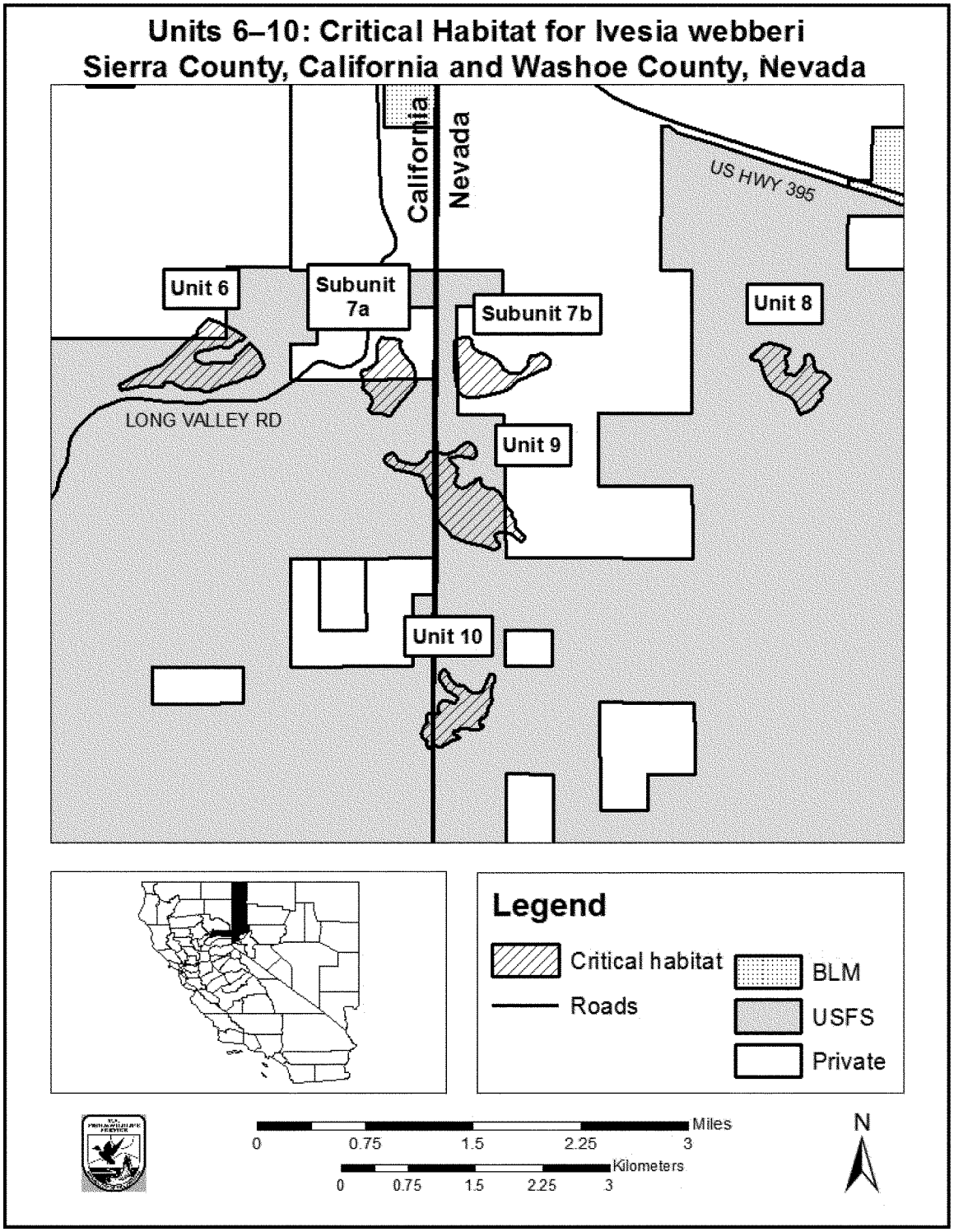
(ii) **Note:** A map of Unit 5 (Subunits 5a and 5b) follows:



(10) Unit 6, White Lake Overlook, Sierra County, California; Unit 7, Subunit 7a, Mules Ear Flat, Sierra County, California; Unit 7, Subunit 7b, Three Pine Flat and Jeffery Pine Saddle, Washoe County, Nevada; Unit 8, Ivesia Flat, Washoe County, Nevada; Unit 9, Stateline Road 1, Washoe County, Nevada; and Unit 10, Stateline Road 2, Washoe County, Nevada: Critical habitat for *Ivesia webberi,* Sierra County, California, and Washoe County, Nevada.

(i) Unit 6 includes 109 ac (44 ha), Subunit 7a includes 65 ac (27 ha), Subunit 7b includes 68 ac (27 ha), Unit 8 includes 62 ac (25 ha), Unit 9 includes 132 ac (53 ha), and Unit 10 includes 65 ac (26 ha).

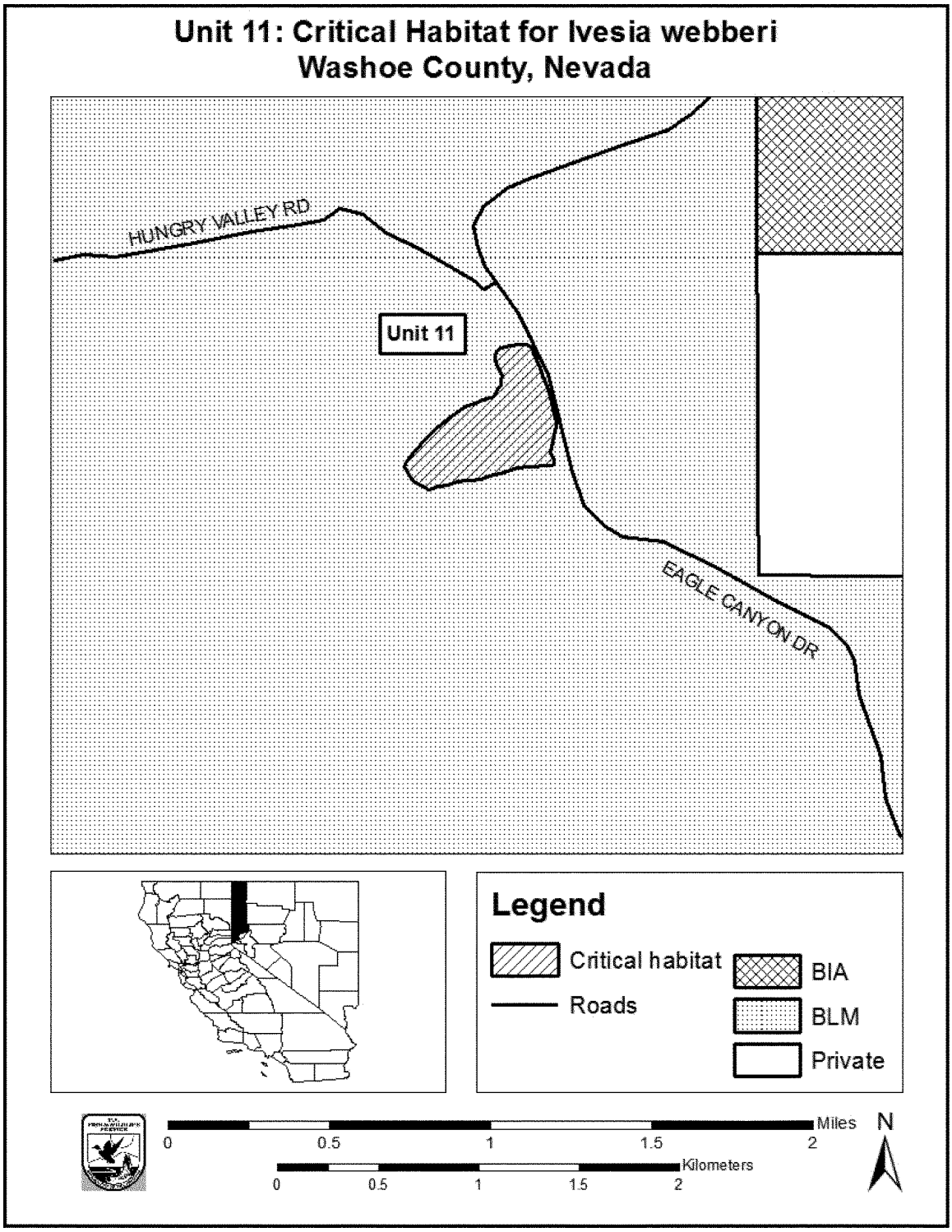
(ii) **Note:** A map of Units 6 through 10 follows:



(11) Unit 11, Hungry Valley: Critical habitat for *Ivesia webberi,* Washoe County, Nevada.

(i) Unit 11 includes 56 ac (23 ha).

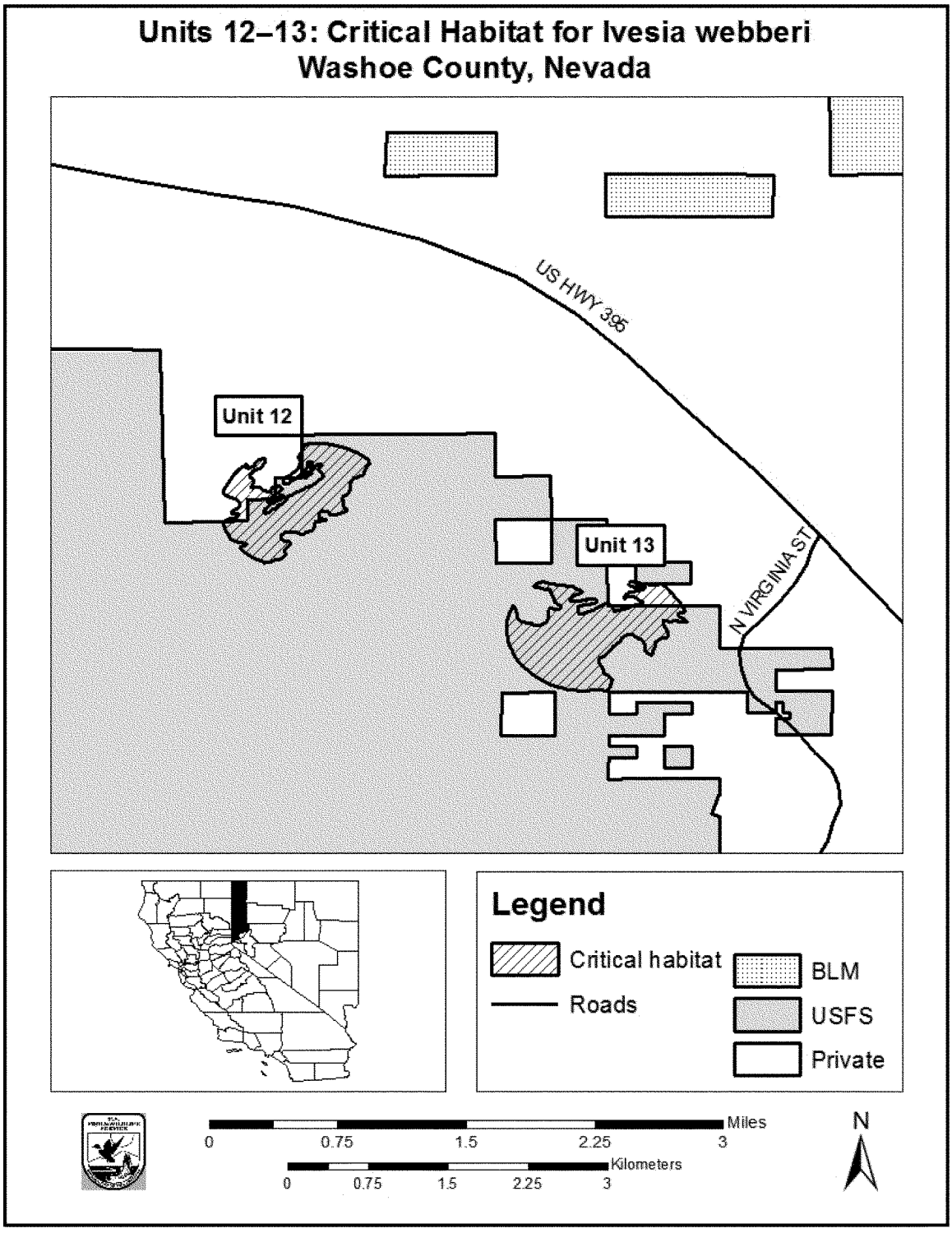
(ii) **Note:** A map of Unit 11 follows:



(12) Unit 12, Black Springs and Unit 13, Raleigh Heights: Critical habitat for *Ivesia webberi,* Washoe County, Nevada.

(i) Unit 12 includes 140 ac (57 ha) and Unit 13 includes 177 ac (72 ha).

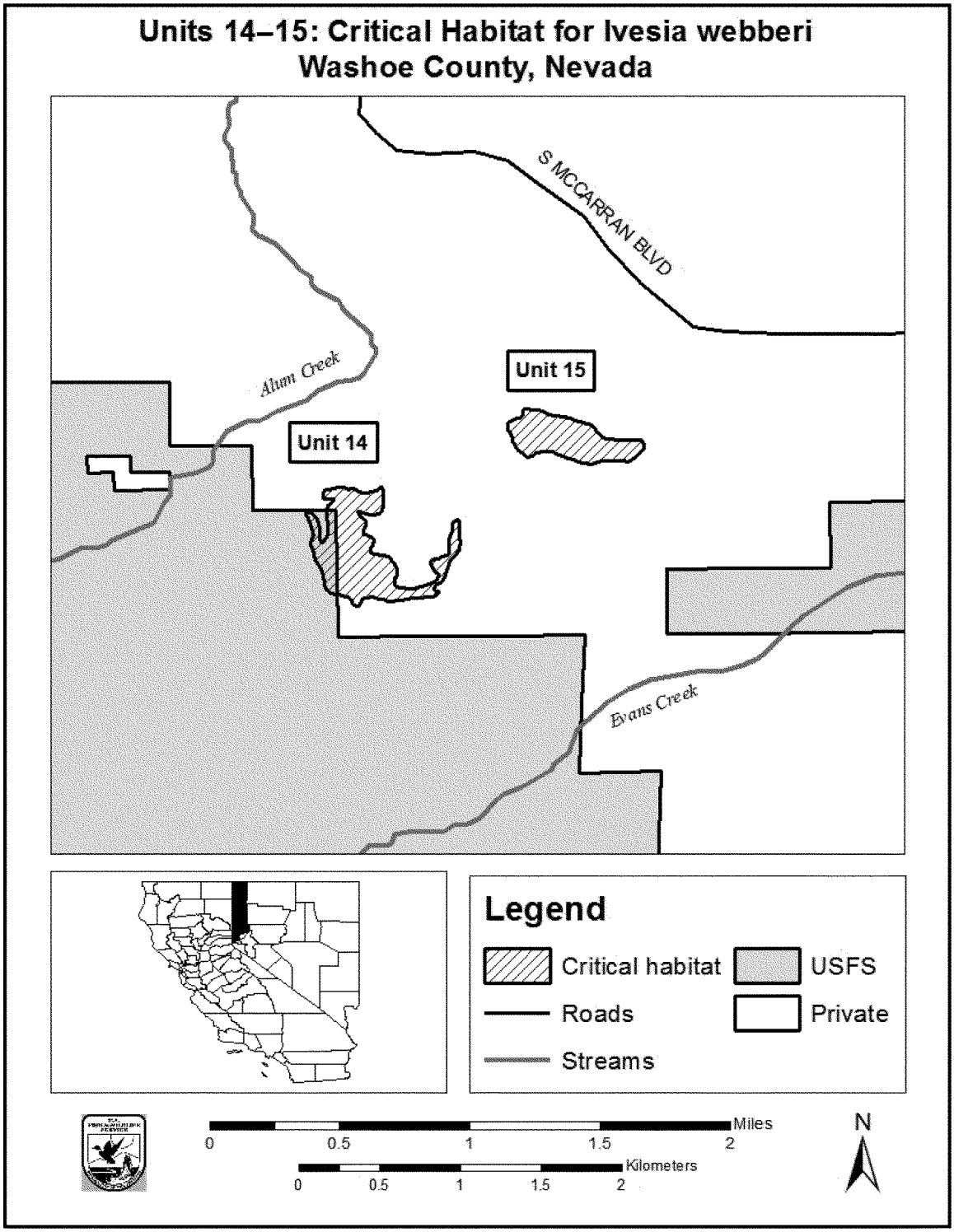
(ii) **Note:** A map of Units 12 and 13 follows:



(13) Unit 14, Dutch Louie Flat and Unit 15, The Pines Powerline: Critical habitat for *Ivesia webberi,* Washoe County, Nevada.

(i) Unit 14 includes 56 ac (23 ha) and Unit 15 includes 32 ac (13 ha).

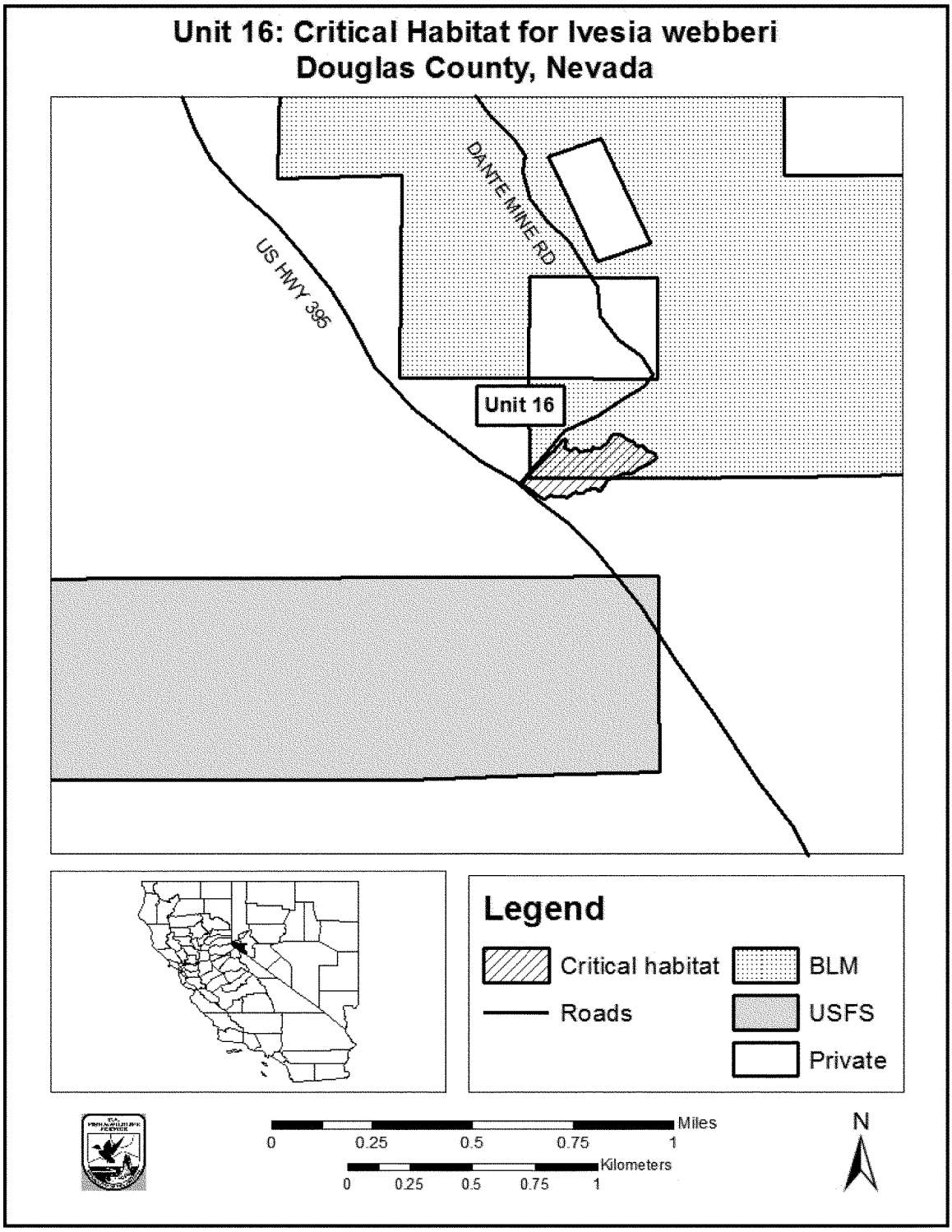
(ii) **Note:** A map of Units 14 and 15 follows:



(14) Unit 16, Dante Mine Road: Critical habitat for *Ivesia webberi,* Douglas County, Nevada.

(i) Unit 16 includes 14 ac (6 ha).

(ii) **Note:** A map of Unit 16 follows:



* * * * *

Dated: July 23, 2013.

Rachel Jacobsen,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–18583 Filed 8–1–13; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS– R8–ES–2013–0079; 4500030113]

RIN 1018–AZ12

Endangered and Threatened Wildlife and Plants; 12-Month Finding and Candidate Removal for *Potentilla basaltica*; Proposed Threatened Species Status for *Ivesia webberi*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: 12-month petition finding; proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the plant *Potentilla basaltica* (Soldier Meadow cinquefoil) as an endangered or threatened species. After review of the best available scientific information, we find that listing *Potentilla basaltica* as an endangered or threatened species under the Endangered Species Act (Act) is no longer warranted, and, therefore, we are removing this species from the candidate list. We propose to list the plant *Ivesia webberi* (Webber's ivesia) as a threatened species under the Act. If finalized, the effect of this regulation would be to add *Ivesia webberi* to the List of Endangered and Threatened Plants and extend the Act's protections to this species. Elsewhere in today's **Federal Register**, we propose to designate critical habitat under the Act for *Ivesia webberi.*

DATES: We will accept comments received or postmarked on or before October 1, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by September 16, 2013.

Public meeting: We will hold a public meeting on this proposed rule on September 10, 2013, in Reno, NV, from 4:00 to 6:00 p.m. People needing reasonable accommodations in order to attend and participate in the public hearing should contact Jeannie Stafford, Nevada Fish and Wildlife Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2013–0079, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2013–0079; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Edward D. Koch, State Supervisor, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502, by telephone 775–861–6300, or by facsimile 775–861–6301. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we find a species to be endangered or threatened throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a final determination on our proposal within 1 year. We designate critical habitat to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designations and revisions of critical habitat can only be completed by issuing a rule.

What this rule does. We propose the listing of *Ivesia webberi* (Webber's ivesia) as a threatened species. *Ivesia webberi* is a candidate species for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation has been precluded by other higher-priority listing activities. This rule reassesses all currently available information regarding status of and threats to *I. webberi.* Elsewhere in today's **Federal Register**, we propose to designate critical habitat for *I. webberi* under the Act.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We find *Ivesia webberi* is subject to the present or threatened destruction, modification, or curtailment of its habitat (Factor A) from the following: Nonnative, invasive plants; modified fire regime (increased wildfire); OHV use and roads; development; livestock grazing; and climate change.

We will seek peer review. We are seeking all comments, including those from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment on our listing proposal for *Ivesia webberi.* A thorough review of information that we relied on in making this determination—including information on taxonomy, life history, ecology, population distribution and abundance, and potential threats—is presented in the *Ivesia webberi* Species Report available at *www.regulations.gov* (Docket Number FWS–R8–ES–2013–0079). A summary of this analysis is found within this proposed rule. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal.

Information Requested

Public Comments

We intend that any final action resulting from this proposed rule for *Ivesia webberi* will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the

scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) *Ivesia webberi*'s biology, distribution, population size and trend, including:

(a) Habitat requirements for pollination, reproduction, and dispersal;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);

(b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);

(c) Disease or predation (Factor C);

(d) The inadequacy of existing regulatory mechanisms (Factor D); or

(e) Other natural or manmade factors affecting its continued existence (Factor E).

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) Any information on the biological or ecological requirements of the species, and ongoing conservation measures for the species and its habitat.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding the *Ivesia webberi* proposed rule. A thorough review of information that we relied on in making this determination—including information on taxonomy, life history, ecology, population distribution and abundance, and potential threats—is presented in the *Ivesia webberi* Species Report available at *http://www.regulations.gov* (Docket Number FWS–R8–ES–2013–0079). A summary of this analysis is found within this proposed rule. The purpose of peer review is to ensure that our listing determination is based on scientifically sound data, assumptions, and analyses. A peer review panel will conduct an assessment of the proposed rule and the specific assumptions and conclusions regarding the proposed listing. This assessment will be completed during the public comment period.

12-Month Petition Finding and Candidate Withdrawal for *Potentilla basaltica*

This section summarizes the information on species status and potential threats that we evaluated in order to determine that listing *Potentilla basaltica* is not warranted and to remove it from candidate status. A thorough review of information that we relied on in making this determination—including information on taxonomy, life history, ecology, population distribution and abundance, and potential threats—is presented in the *P. basaltica* (Soldier Meadow Cinquefoil) Species Report (Service 2013a, entire), which is available at *http://www.regulations.gov* (in the Search box, enter FWS–R8–ES–2013–0079, which is the docket number for this rulemaking).

The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);

(b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);

(c) Disease or predation (Factor C);

(d) The inadequacy of existing regulatory mechanisms (Factor D); or

(e) Other natural or manmade factors affecting its continued existence (Factor E).

We discuss the potential threats related to each factor below.

We identified *Potentilla basaltica* as a candidate in the June 13, 2002, Candidate Notice of Review (CNOR, 67 FR 40657). At the time, our assessment was that the species was being impacted by the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A) resulting from the primary threats of heavy recreational use, OHV activity, and livestock grazing at Soldier Meadow. A candidate species is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened, but for which preparation and publication of a proposal is precluded by higher-priority listing actions. *Potentilla basaltica* was included in all subsequent annual

CNORs (69 FR 24875, May 4, 2004; 70 FR 24869, May 11, 2005; 71 FR 53756, September 12, 2006; 72 FR 69033, December 6, 2007; 73 FR 75175, December 10, 2008; 74 FR 57803, November 9, 2009; 75 FR 69221, November 10, 2010; and 76 FR 66370, October 26, 2011; 77 FR 69993, November 21, 2012). On May 11, 2004, we received a petition to list a total of 225 plant and animal species from the list of candidate species, including *P. basaltica.* Because we previously found that *P. basaltica* was warranted for listing, no further action was taken on the petition. When it was first identified as a candidate in 2002, we assigned *P. basaltica* a listing priority number (LPN) of 5, reflecting a species with threats that were considered high in magnitude but nonimminent. In 2006 (71 FR 53756), we changed the LPN to 11, reflecting a species with threats that were considered moderate to low in magnitude and nonimminent. The LPN for *P. basaltica* remained at 11 in 2007 (72 FR 69034), 2008 (73 FR 75176), 2009 (74 FR 57804), 2010 (75 FR 69222), 2011 (76 FR 66370), and 2012 (77 FR 69993).

Potentilla basaltica is a low-growing, perennial forb in the Rose family (Rosaceae) that forms a basal rosette with low-growing stems and small, yellow flowers. This species has a limited geographic range and is known to occur on approximately 22.7 acres (ac) (9.2 hectares (ha)) of habitat at Soldier Meadow in Humboldt County, Nevada, and Ash Valley in Lassen County, California (Service 2013x, p. x). Habitat conditions occupied by the species differ between these two locations. At Soldier Meadow, *P. basaltica* occurs in or near alkali meadows, seeps, and marsh habitats bordering perennial thermal springs, outflows, and meadow depressions, while in Ash Valley, *P. basaltica* occurs between the floodplain of Ash Creek and the sagebrush steppe (Service 2013x, p. x). At these two locations, *P. basaltica* is known from a total of three populations (two in Soldier Meadow and one in Ash Valley), each of which is located primarily on public lands managed by the Bureau of Land Management (BLM; 95 percent). The only available estimates of abundance suggest a combined total of between 75,950 and 133,614 individual plants across all three populations, with most of these individuals occurring at the two populations in Soldier Meadow in Nevada (74,950 to 132,000 individuals) (Service 2013a, p. 10).

Impacts to *Potentilla basaltica* and its habitat identified at the time it was determined to be a candidate species in 2002—recreational use, livestock grazing, roads and off-highway vehicle (OHV) activity, geothermal exploration, and nonnative, invasive plant species—have been substantially reduced since 2002. The BLM implemented several measures that have been effective in reducing recreational use impacts to *P. basaltica* in Soldier Meadow: Establishing a designated, centralized campground, which discourages dispersed camping in wet meadow habitats where *P. basaltica* occurs; designating walkways away from *P. basaltica* habitat; installing interpretive signs informing recreationists about the sensitive plant and animal species found in the wetland and thermal spring habitats of Soldier Meadow; and use of a campground host in Soldier Meadow who interacts with visitors informing them of designated camping and bathing areas and providing education about the sensitive plant and animal species present in the area (Service 2013a, p. 18).

Other impacts to *Potentilla basaltica* also have been greatly reduced since 2002. In 2004, the areas where *P. basaltica* occurred in Soldier Meadow were fenced to exclude domestic livestock, wild horses, and other large ungulates; this initiative significantly reduced livestock grazing impacts to the species (Service 2013a, p. 20). In 2004, the BLM also closed roads (authorized and unauthorized) in Soldier Meadow that led to spring, riparian, and wetland areas and limited OHV use to designated roads and trails (Service 2013a, p. 15). These closures and OHV restrictions remain in place today and have effectively reduced impacts to *P. basaltica* from roads and OHVs. Within Soldier Meadow, BLM personnel coordinate efforts to detect and rapidly respond to nonnative, invasive plant species using chemical control and other treatment methods (Service 2013a, pp. 19–20). Geothermal exploration occurred in the Soldier Meadow area during the 1970s. Portions of Soldier Meadow *P. basaltica* population areas were protected from exploration and development activities in 1982 when the BLM designated the area as an Area of Critical Environmental Concern (ACEC). In 2003, the BLM expanded the existing Soldier Meadow ACEC to provide additional protection for the desert dace (*Eremichthys acros*), which was listed as threatened under the Act in 1985, as well as to provide additional protection for *P. basaltica* (USFWS 1997, p. 22). The Soldier Meadow ACEC is also designated as a BLM Research Natural Area.

The Ash Valley, California, population, which occurs on a much smaller area and contains many fewer plants than the Soldier Meadow populations (Service 2013a, p. 10), is located in part on BLM lands designated as a Research Natural Area and ACEC and in part on private lands (Service 2013a, pp. 10–11). These BLM lands have been withdrawn from mining activity and are excluded from timber management and woodcutting activity (Service 2013a, p. 18). In 2008, the BLM issued a Record of Decision on the Alturas Resource Area Management Plan (RMP) and Final Environmental Impact Statement (BLM 2008a, pp. A–1–A–10). The RMP identified the need for establishing a long-term monitoring plot for *Potentilla basaltica* and limiting OHV travel to designated routes within the Ash Valley ACEC and Research Natural Area (BLM 2007, p. 2–105). And, if monitoring data suggested a decline in numbers or reproductive viability of *P. basaltica,* fencing would be constructed to exclude livestock grazing (BLM 2007, p. 2–106). The RMP also proposed the acquisition of private lands supporting unprotected populations of special status plants, including *P. basaltica* (BLM 2008a, p. 13).

In addition to evaluation of the threats identified at the time *Potentilla basaltica* was determined to be a candidate species, we also evaluated potential impacts of climate change on the species. Although climate change is likely to affect ecosystem function in Soldier Meadow and Ash Valley where *P. basaltica* occurs, we conclude that because of uncertainty about specific effects of climate change on *P. basaltica,* the best available scientific and commercial information does not indicate at this time that effects of climate change are likely to threaten the continued existence of *P. basaltica* now or in the foreseeable future (Service 2013a, pp. 22–23).

Potentilla basaltica is a BLM sensitive species (Service 2013a, p. 2). The stated objective for BLM sensitive species is to initiate proactive conservation measures that reduce or eliminate threats to minimize the likelihood of and need for listing (BLM 2008a, 6840.02). Conservation, as it applies to BLM sensitive species, is defined as ''the use of programs, plans, and management practices to reduce or eliminate threats affecting the status of the species, or improve the condition of the species' habitat on BLM-administered lands'' (BLM 2008b, Glossary, p. 2).

Potentilla basaltica is not State listed as endangered or threatened in either Nevada or California. However, in California, *P. basaltica* has a California Native Plant Society (CNPS) rank of 1B.3 (not very threatened in California,

with less than 20 percent of occurrences threatened and low degree and immediacy of threat or no current threats known) (CNPS 2013). Plants, like *P. basaltica,* with a CNPS 1.B rank must be fully considered during preparation of environmental documents relating to the California Environmental Quality Act (CEQA) (CNPS 2013).

Based on our analysis of the five factors identified in section 4(a)(1) of the Act, we conclude that the previously recognized impacts to *Potentilla basaltica* from present or threatened destruction, modification, or curtailment of its habitat or range (Factor A) (recreational use; OHV use; introduction of nonnative, invasive plant species; and trampling by livestock), do not rise to a level of significance such that the species is in danger of extinction now or in the foreseeable future. We evaluated additional potential impacts under the the five listing factors stated above. In that evaluation we found that potential impacts such as livestock grazing (Factors A and E), geothermal exploration (Factors A and E), herbivory (Factor B), disease (Factor C), and climate change (Factor A) to either be of no concern or insignificant concern at this time. Additionally, conservation measures and protection provided by BLM for species associated with thermal springs are benefiting *P. basaltica,* and we anticipate these conservation measures and protections to continue to benefit *P. basaltica* into the foreseeable future (in part due to other sensitive and federally listed species occurring in these areas). Thus, the existing regulatory mechanisms are adequate to protect the species from the potential impacts (Factor D). See the ''Factors Affecting the Species'' section of the Species Report (Service 2013a, pp. 17–24) for a thorough discussion of all potential and current threats.

The best available information to assist us in assessing foreseeable future for *Potentilla basaltica* is the time period associated with management planning activities. Because the majority (95 percent) of *P. basaltica* occupied areas are on Federal lands that receive conservation protections resulting from Federal laws and the regulations and policies implementing those laws (i.e., Federal Land Policy Management Act, National Environmental Policy Act), we look to the historical timeframe for completing management plans and current planning efforts to assist us in defining foreseeable future. Based on this timeframe information, we estimate the foreseeable future to be at least 30 years (i.e., 2043) for this analysis. Therefore, we conclude that *P. basaltica* does not meet the definition of an endangered or threatened species and thus is no longer warranted for listing under the Act. With the publication of this notice, *P. basaltica* will be removed from the list of candidate species.

Proposed Threatened Species Status for *Ivesia webberi*

Previous Federal Actions

We identified *Ivesia webberi* as a candidate in the June 13, 2002, Candidate Notice of Review (CNOR, 67 FR 40657). *Ivesia webberi* was included in all subsequent annual CNORs (69 FR 24875, May 4, 2004; 70 FR 24869, May 11, 2005; 71 FR 53756, September 12, 2006; 72 FR 69033, December 6, 2007; 73 FR 75175, December 10, 2008; 74 FR 57803, November 9, 2009; 75 FR 69221, November 10, 2010; and 76 FR 66370, October 26, 2011; 77 FR 69993, November 21, 2012). On May 11, 2004, we received a petition to list a total of 225 plant and animal species from the list of candidate species, including *I. webberi.* Because we previously found the species was warranted for listing, no further action was taken on the petition. When it was first identified as a candidate in 2002 (67 FR 40657), we assigned *I. webberi* a listing priority number (LPN) of 5, reflecting a species with threats that were considered high in magnitude but nonimminent; the LPN remained at 5 in all subsequent CNORs.

Background

In this and the following section, we summarize from information on species status and potential threats that we evaluated in order to determine that *Ivesia webberi* meets the Act's definition of a threatened species (section 3(20)). A thorough review of information that we relied on in making this determination—including information on taxonomy, life history, ecology, population distribution and abundance, and threats—is presented in the *Ivesia webberi* (Webber's ivesia) Species Report (Service 2013b, entire; available at *http://www.regulations.gov* (in the Search box, enter FWS–R8–ES–2013–0079, which is the docket number for this rulemaking).

Ivesia webberi is a low, spreading perennial forb in the Rose family (Rosaceae) with grayish-green foliage, dark-red, wiry stems, and headlike clusters of small, yellow flowers. This species occupies vernally moist, rocky, clay soils with an argillic horizon that shrink and swell upon drying and wetting in open to sparsely vegetated areas associated with an *Artemisia arbuscula* (low sagebrush)–perennial bunchgrass–forb community. The specialized soils are well developed, a process estimated to take 1,000 years. Limited seed dispersal and apparent limited recruitment further restrict the occupied range and distribution of *I. webberi.*

Ivesia webberi is currently known to occupy a total of approximately 165 ac (66.8 ha) within five counties in California and Nevada along the transition zone between the eastern edge of the northern Sierra Nevada and the northwestern edge of the Great Basin (Service 2013b, p. 2). The species is known historically from a total of 17 populations, but 1 has been extirpated and a portion of another (1 of 4 subpopulations) is possibly extirpated. Of the remaining 16 populations, the status of 4 is unknown, and we currently are uncertain whether the species still persists at these locations (Service 2013b, p. 2). For the remaining 10 populations where the species' status is better understood, 6 occur on areas that are less than 5 ac (2 ha) each. Reliable estimation of population sizes or trends in *I. webberi* is complicated because past population estimates have usually been obtained by different observers employing a variety of methodologies and varying levels of survey effort (Service 2013b, p. 2).

Summary of Biological Status and Threats

Due to the restricted range, specialized habitat requirements, and limited recruitment and dispersal of *Ivesia webberi,* populations of this species are vulnerable to ongoing and future threats that affect both individual plants and their habitat. The primary threats to *I. webberi* are the additive and synergistic effects due to nonnative, invasive plant species and modified fire regime (Service 2013b, pp. 31–32). Nonnative, invasive plant species, such as *Bromus tectorum* (cheatgrass), *Poa bulbosa* (bulbous bluegrass), and *Taeniatherum caput-medusae* (medusahead), have become established and are part of the associated plant community at 12 of the 16 extant populations of *I. webberi.* Nonnative, invasive plant species negatively affect *I. webberi* through competition, displacement, and degradation of the quality and composition of the *Artemisia arbuscula*–perennial bunchgrass–forb community in which *I. webberi* occurs. In addition to these effects, these nonnative, invasive plant species, once established, contribute fuels that increase the frequency and likelihood of wildfire in I. webberi habitat.

Wildfire was historically infrequent in the Great Basin because the native plant communities made up of annuals and perennial bunchgrasses did not provide sufficient fine fuels to carry large-scale wildfires. The bare spaces between widely spaced shrubs and the low fuel load of native annuals and perennial bunchgrasses generally prevented fire from spreading, so the fires that did burn were restricted to isolated patches. In *Artemisia arbuscula* communities, such as those that *Ivesia webberi* inhabits, the average fire return interval is greater than 100 years, due to natural lower productivity and fuel accumulations (Service 2013b, p. 24). However, beginning in the late 1800s, the widespread invasion of nonnative plant species, particularly annual grasses, has created a bed of continuous fine fuels across the sagebrush landscape in many areas (Service 2013b, p. 24). This increase in fine fuels created by nonnative, invasive plants has resulted in more frequent fires that burn larger areas and often burn at higher intensities. Post-fire conditions further facilitate the invasion and establishment of nonnative, invasive plant species, thus creating a positive feedback loop between increased wildfire and the spread of these species (Service 2013b, p. 24). Ten of the 16 extant *I. webberi* populations have experienced wildfire since 1984 (Service 2013b, p. 24). Because *I. webberi* did not evolve with frequent fire and does not possess adaptations that would help it persist in a frequent-fire fire regime, wildfires are expected to have adverse population-level impacts on the species. In addition, increased wildfire frequency within the species' range results in increased wildfire suppression activities, which also may adversely affect *I. webberi* populations (Service 2013b, pp. 22, 24–25).

Other threats impacting *Ivesia webberi* populations include OHV use and roads, development, livestock grazing, and climate change (Service 2013b, pp. 25–31). OHV impacts to *I. webberi* populations have increased during the past 20 years as population growth and associated development have increased (Bergstrom 2009, p. 22), especially in the Reno urban area where 6 of the 16 populations occur. Ten of 16 extant *I. webberi* populations are adjacent to or intersected by dirt roads and have been impacted to some degree by road development and OHV use (Service 2013b, pp. 25–26). Roads cause habitat loss and degradation and when vehicles drive off existing roads and trails they can crush plants, compact soils, and provide a means for nonnative, invasive plant species to invade otherwise remote, intact habitats. The U.S. Forest Service concluded that a 2006 travel management plan for Peavine Mountain would benefit rare plant species, including *I. webberi;* however, designated roads open to all vehicles continue to bisect *I. webberi* populations, and unauthorized OHV use remains high within *I. webberi* populations on Forest Service lands in the Reno urban area (Service 2013b, p. 26).

Development, which results in direct mortality, habitat loss, degradation, and fragmentation, has resulted in the extirpation of one *Ivesia webberi* population and the loss of a portion of another population (Service 2013x, p. x). Residential or commercial development is ongoing or planned at each of the four Nevada populations located on private lands. In addition, construction of a 120-kV overhead transmission line may impact two *I. webberi* populations located on Forest Service lands (Service 2013b, p. 26). Livestock grazing has the potential to result in negative effects to *I. webberi* due to trampling and substrate disturbance, but this situation is dependent on factors such as stocking rate and season of use. Two *I. webberi* populations occur in areas that are currently grazed by cattle, and another seven populations occur within vacant grazing allotments that could be reopened to grazing to alleviate grazing pressures on nearby allotments (Service 2013b, p. 29).

Climate change is likely to affect *Ivesia webberi,* although it is difficult to project specific effects. In the Great Basin, temperatures have risen 0.9 to 2.7 °F (0.5 to 1.5 °C) in the last 100 years and are projected to warm another 3.8 to 10.3 °F (2.1 to 5.7 °C) over the rest of the century (Service 2013b, p. 30). Under current climate change projections, we anticipate that future climatic conditions will favor the further spread of nonnative, invasive plants and increase the frequency, spatial extent, and severity of wildfires (Service 2013b, p. 30). Alteration of temperature and precipitation patterns as a result of climate change also may result in decreased survivorship of *I. webberi* by causing physiological stress, altering phenology, and reducing reproduction or seedling establishment.

Because most of the habitat where the species is known to occur is located on Federal lands (69 percent of occupied habitat occurs on Forest Service lands, and 10 percent of occupied habitat occurs on BLM lands), *Ivesia webberi* receives some conservation protections resulting from Federal laws and the regulations and policies implementing those laws (e.g., the National Forest Management Act, Federal Land Policy Management Act, National Environmental Policy Act). *Ivesia webberi* receives special consideration on Federal lands because it is classified as a sensitive species by both the Forest Service and BLM (Service 2013b, pp. 3–4). The species also is classified as threatened with extinction and fully protected by the State of Nevada; removing or destroying *I. webberi* and other fully protected plants is prohibited except under special permit issued by the Nevada Division of Forestry (NDF 2013). *Ivesia webberi* is not listed as endangered or threatened under the California Endangered Species Act (CESA), but has a California Native Plant Society (CNPS) rare plant rank of 1B.1 (seriously threatened in California with over 80 percent of occurrences threatened and high degree and immediacy of threat (CNPS 2013). *Ivesia webberi* and other plants with a CNPS 1B rank must be fully considered during preparation of environmental documents relating to the California Environmental Quality Act (CEQA) (CNPS 2013).

The Forest Service drafted a rangewide conservation strategy for *Ivesia webberi* to guide conservation actions for the species on Forest Service lands (Service 2013b, pp. 21–22). The conservation strategy, which was signed in 2010, will result in long-term benefits to *I. webberi* populations located on Forest Service lands (Bergstrom 2009, pp. 1–46). However, we expect that the landscape-level threats of nonnative, invasive plants and increased wildfire will continue to adversely affect *I. webberi* populations across the species' range (Service 2013b, p. 22).

Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *Ivesia webberi.* We considered the five factors identified in section 4(a)(1) of the Act in determining whether *I. webberi* meets the Act's definition of an endangered species (section 3(6)) or threatened species (section 3(20)). We find that *I. webberi* is threatened by the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A). Present or threatened destruction, modification, or curtailment of its habitat or range include habitat loss and degradation due to nonnative, invasive plants, modified fire regime (increased wildfire), OHV use and roads, development, livestock grazing, and

climate change. Of these, we consider the additive and synergistic effects of nonnative, invasive plants and increased wildfire to be the greatest threats to *I. webberi.*

Nonnative, invasive plant species such as *Bromus tectorum* and *Taeniatherum caput-medusae* can outcompete and displace *I. webberi* and result in increased frequency, spatial extent, and severity of wildfires because of the increase in fine fuels they produce. Twelve of the 16 extant populations have already been invaded by nonnative, invasive plant species and 10 of the 16 extant populations have been impacted by wildfire since 1984. Because there are currently no feasible means for controlling the spread of widespread nonnative, invasive plant species such as *B. tectorum* and *T. caput-medusae,* we expect that wildfires will continue to impact *I. webberi* populations. Increased temperatures and altered precipitation patterns due to climate change are projected to lead to further increases in wildfire and nonnative, invasive plants. OHV use and roads, development, and livestock grazing are having impacts on certain *I. webberi* populations.

We did not identify threats to *Ivesia webberi* due to overutilization for commercial, recreational, scientific, or educational purposes (Factor B); disease or predation (Factor C); or other natural or manmade factors affecting its continued existence (Factor E). Although regulatory mechanisms (Factor D) are in place that provide some protection to *I. webberi* and its habitat, these mechanisms do not completely alleviate all of the threats currently acting on the species.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' Available population information for *Ivesia webberi* is not useful for determining trends because population estimates have been obtained by different observers employing a variety of means and levels of survey effort. Nonnative, invasive plant species, wildfire, and OHV activity are present impacts throughout the range of *I. webberi* and in some cases are found to be increasing for many years with data in particular related to increased recreational OHV activity over the past 20 years (Service 2013b, pp. 25–26) and increased wildfire and suppression activities over the past 30 years (Service 2013b, pp. 22, 24–25). Additionally, given current climate change projections, we anticipate that future climatic conditions will favor invasion by nonnative, invasive plant species, which will further contribute to increases in frequency, spatial extent, and severity of wildfires (Service 2013b, pp. 29–31). Based on the timeframe associated with the documented increased level of some threats over the past 30 years and the effects of climate change projections on these threats, we estimate the foreseeable future to be at least 30 years (i.e., 2043).

We find that *Ivesia webberi* is not presently in danger of extinction throughout all of its range, but that it is likely to become endangered throughout all of its range in the foreseeable future. We find that *I. webberi* is not presently in danger of extinction because the species is characterized by multiple populations spread across northeastern California and northwestern Nevada and that, in total, these populations provide sufficient redundancy (multiple populations distributed across the landscape), resiliency (capacity for a species to recover from periodic disturbance), and representation (range of variation found in a species) such that *I. webberi* is not at immediate risk of extinction. However, because multiple threats (nonnative, invasive plants, increased wildfire, OHV use and roads, development, livestock grazing, and climate change) are impacting many of the *I. webberi* populations and because additive and synergistic effects due to nonnative, invasive plants, increased wildfire, and climate change are likely to continue and increase in the future, we find that *I. webberi* is likely to become an endangered species throughout all of its range in the foreseeable future. Therefore, on the basis of the best available scientific and commercial information, we propose listing *I. webberi* as a threatened species.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range.

Significant Portion of the Range

Having determined that *Ivesia webberi* meets the Act's definition of a threatened species, we must next consider whether there are any significant portions of its range where *I. webberi* is presently in danger of extinction and thus meets the definition of an endangered species. In determining whether a species is endangered or threatened in a significant portion of its range, we first identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions an infinite number of ways. However, analyzing portions of the range that are not reasonably likely to be both (1) significant and (2) endangered or threatened would serve no purpose. To identify only those portions that warrant further consideration, we determine whether substantial information indicates that: (1) The portions may be significant, and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species' range that are not significant, such portions will not warrant further consideration.

If we identify portions that warrant further consideration, we then determine whether the species is endangered or threatened in these portions of its range. Depending on the biology of the species, its range, and the threats it faces, the Service may address either the significance question or the status question first. Thus, if the Service considers significance first and determines that a portion of the range is not significant, the Service need not determine whether the species is endangered or threatened there. Likewise, if the Service considers status first and determines that the species is not endangered or threatened in a portion of its range, the Service need not determine if that portion is significant. However, if the Service determines that both a portion of the range of a species is significant and the species is endangered or threatened there, the Service will specify that portion of the range as endangered or threatened under section 4(c)(1) of the Act.

The primary threats to *Ivesia webberi* occur throughout the species' range and are not restricted to or concentrated in any particular portion of that range. The primary threats of nonnative, invasive plants and increased wildfire are impacting *I. webberi* populations throughout the California and Nevada portions of the species' range. Climate change also is acting on *I. webberi* throughout the species' range. Thus, we conclude that threats impacting *I. webberi* are not concentrated in certain areas and, thus, there are no significant portions of its range where the species should be classified as an endangered species. Accordingly, our proposal to list *I. webberi* as a threatened species

applies throughout the species' entire range.

Available Conservation Measures Resulting From Listing

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act provides direction for cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If *Ivesia webberi* is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of California and Nevada would be eligible for Federal funds to implement management actions that promote the protection or recovery of *I. webberi.* Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although *Ivesia webberi* is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within *Ivesia webberi's* habitat that may require conference or consultation or both as described in the preceding paragraph include land management actions that could result in impacts to soil characteristics or seedbank viability, pollinators or their habitat, and associated native vegetation community, and any other landscape-altering activities on Federal lands, such as: Reauthorization of grazing permits by the BLM and the U.S. Forest Service, issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers, construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission, and construction and maintenance of roads or highways by the Federal Highway Administration.

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered and threatened plants. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.61, apply to endangered plants. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. These take prohibitions for endangered plant species are extended to threatened plant species under 50 CFR 17.71, except the take prohibitions do not extend to seeds of cultivated specimens, provided that a statement that the seeds are of ''cultivated origin'' accompanies the seeds or their container. Also, 50 CFR 17.71(b) authorizes Service and State

conservation agency employees to remove and reduce to possession from Federal lands those threatened plant species covered by cooperative agreements under section 6(c) of the Act.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62 for endangered plants, and at 17.72 for threatened plants. With regard to endangered plants, a permit must be issued for the following purposes: For scientific purposes or to enhance the propagation or survival of the species.

Under section 4(d) of the ESA, the Secretary has discretion to issue such regulations as he deems necessary and advisable to provide for the conservation of threatened species. Our implementing regulations (50 CFR 17.71) for threatened plants generally incorporate the prohibitions of section 9 of the Act for endangered plants, except when a ''special rule'' promulgated pursuant to section 4(d) of the Act has been issued with respect to a particular threatened species. In such a case, the general prohibitions in 50 CFR 17.61 would not apply to that species, and instead, the special rule would define the specific take prohibitions and exceptions that would apply for that particular threatened species, which we consider necessary and advisable to conserve the species. The Secretary also has the discretion to prohibit by regulation with respect to a threatened species any act prohibited by section 9(a)(2) of the ESA. Exercising this discretion, which has been delegated to the Service by the Secretary, the Service has developed general prohibitions that are appropriate for most threatened species in 50 CFR 17.71 and exceptions to those prohibitions in 50 CFR 17.62. We are not proposing to promulgate a special section 4(d) rule, and as a result, all of the section 9 prohibitions, including the ''take'' prohibitions, will apply to the *Ivesia webberi.*

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

In addition to the take prohibitions that would be afforded to *Ivesia webberi* throughout its range in California and Nevada under section 9 of the Act, *I. webberi* is listed as threatened by the State of Nevada pursuant to Nevada Revised Statute (N.R.S.) 527.260–.300 and was added to the State list of fully protected species of native flora (Nevada Administrative Code 527.010) in 2004. Removing or destroying plants on the State's fully protected list is prohibited except under special permit issued by the Nevada Division of Forestry (N.R.S. 527.270). *Ivesia webberi* is not listed by the State of California under the California Endangered Species Act (CESA), so removal or destruction of plants is not currently prohibited by State law in California. *Ivesia webberi* does have a California Native Plant Society rare plant rank of 1B.1 and must be fully considered during preparation of environmental documents relating to the California Environmental Quality Act (CEQA) (see *Summary of Biological Status and Threats* section).

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Service's Nevada Fish and Wildlife Office and Region 8 Regional Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245; unless otherwise noted.

■ 2. Amend § 17.12 paragraph (h), by adding an entry for ''*Ivesia webberi* (Webber's ivesia)'' to the List of Endangered and Threatened Plants in alphabetical order under ''Flowering Plants'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Ivesia webberi	Webber's ivesia	U.S.A. (CA, NV)	Rosaceae	T		NA	NA
*	*	*	*	*	*	*	

* * * * *

Dated: July 23, 2013.

Signed:

Stephen Guertin,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–18579 Filed 8–1–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130408348–3348–01]

RIN 0648–BD17

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Framework Adjustment 2 and Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulations to implement Framework Adjustment 2 to the Atlantic herring Fishery Management Plan and the 2013–2015 fishery specifications for the Atlantic herring fishery. Framework 2 would allow the New England Fishery Management Council to split annual catch limits seasonally for the four Atlantic herring management areas, and the carryover of unharvested catch, up to 10 percent for each area's annual catch limit. The specifications would set catch specifications for the herring fishery for the 2013–2015 fishing years and would establish seasonal splits for management areas 1A and 1B as recommended to NMFS by the New England Fishery Management Council.

DATES: Public comments must be received by September 3, 2013.

ADDRESSES: Copies of supporting documents used by the New England Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465–0492. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*.

You may submit comments, identified by NOAA–NMFS–2013–0120, by any one of the following methods:

—*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0120,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments;

—*Mail:* Submit written comments to NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Framework 2 and 2013–2015 Herring Specifications;''

—*Fax:* (978) 281–9135, Attn: Carrie Nordeen.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, (978) 281–9272, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) for herring appear at 50 CFR part 648, subpart K. The regulations at § 648.200 require the Council to recommend herring specifications for NMFS' review and proposal in the **Federal Register**, including the overfishing limit (OFL), acceptable biological catch (ABC), annual catch limit (ACL), optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), U.S. at-sea processing (USAP), border transfer (BT), the sub-ACL for each management area, including seasonal periods as allowed by § 648.201(d) and modifications to sub-ACLs as allowed by § 648.201(f), and the amount to be set aside for the research set aside (RSA) (3 percent of the sub-ACL from any management area) for up to 3 years.

The proposed 2013–2015 herring specifications are based on the provisions currently in the Herring FMP, and provide the necessary elements to comply with the ACL and accountability measure (AM) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This action also includes measures proposed in Framework Adjustment 2 (Framework 2) to the FMP.

Framework 2 Measures

Framework 2 would allow seasonal splits of sub-ACLs for all herring management areas through the specifications process. The Herring FMP already authorizes seasonal splits of the

Area 1A sub-ACL. The proposed sub-ACL splitting under Framework 2 would allow seasonal control of fishing effort and harvest in management areas by specifying the percent of the sub-ACL available for harvest. The FY 2013–2015 specifications propose the following:

Area 1A: 100 percent of the sub-ACL available for harvest during June-December (none of the sub-ACL would be available for harvest during January through May); and

Area 1B: 100 percent of the sub-ACL available for harvest during May-December (none of the sub-ACL would be available for harvest during January through April).

Framework 2 would also allow the carryover of unharvested catch, up to 10 percent for each sub-ACL, provided the stock-wide catch did not exceed the stock-wide ACL. This measure allows a sub-ACL increase for a management area, but it does not allow a corresponding increase to the stock-wide ACL. Overall harvest would therefore remain constrained by the stock-wide ACL. Consequently, the fleet would be required to forego harvest in one or more management areas in order to harvest the carryover available in an area. This measure would maintain the management uncertainty buffer between ABC and the stock-wide ACL, while giving the fleet some flexibility in choosing where to harvest the stock-wide ACL.

Under this measure, NMFS would allocate carryover in the second year after the applicable year ends. The interim year is necessary because the herring fishery can be active up to the end of December, and NMFS cannot finalize herring catch data until about 6 months after the end of the fishing year (FY). Therefore, NMFS would apply carryover from fishing year 2013 in FY 2015, for example.

2013–2015 Herring Specifications

The Gulf of Maine-Georges Bank herring stock complex is a transboundary stock that is found in both U.S. and Canadian waters. The 2012 Stock Assessment Review Committee of the 54th Northeast Regional Stock Assessment Workshop estimated the 2011 herring biomass at 517,930 mt (biomass supporting maximum sustainable yield (B_{MSY}) = 157,000 mt) and the 2011 fishing mortality rate (F) at 0.14 (F_{MSY} (0.27)). Because the herring stock complex is above ½ B_{MSY} and the fishing mortality rate is below F_{MSY}, the stock is not overfished and overfishing is not occurring. This assessment increased natural mortality rates for 1996–2011 by 50 percent to resolve a retrospective pattern and ensure rates take into account estimated consumption of herring in the ecosystem.

On March 9, 2012, U.S. District Court for the District of Columbia (Court) found that the environmental assessment for Amendment 4 to the FMP did not analyze a reasonable range of alternatives for an ABC control rule or AMs. On August 2, 2012, the Court ordered NMFS to recommend to the Council that the Council consider an adequate range of alternatives for AMs and an ABC control rule based on the best available science for setting ABC control rules for herring and other forage fish. The final rule for Amendment 4 stated that, if a new ABC control rule could be developed following the 2012 herring stock assessment, it would be developed in the 2013–2015 specifications. Additionally, the current herring regulations authorize the modification of existing AMs through the specification process. Therefore, in an August 31, 2012, letter to the Council, NMFS strongly recommended that the Council analyze a range of alternatives for an ABC control rule that consider Atlantic herring's role as forage and AMs as part of the 2013–2015 herring specifications.

On September 12, 2012, the Council's Scientific and Statistical Committee (SSC) considered various approaches for an ABC control rule. The SSC considered the ABC approaches examined by the Herring Plan Development Team (PDT), discussed other possible approaches, and agreed to support both PDT approaches as alternatives for ABC and the ABC control rule for 2013–2015 as the most appropriate for management at this time. The first approach sets ABC for all 3 years based on 75 percent F_{MSY}. The second approach sets ABC at the same level for all 3 years, which has a no greater than 50-percent probability of exceeding F_{MSY} in 2015. The SSC concluded that these two approaches for setting ABC are nearly equivalent from a biological perspective, as they are expected to produce similar spawning stock biomass values for the herring stock in 2015. The SSC also determined that the two control rules would likely meet ecosystem-based targets for a forage species because they incorporated a major advance in accounting for natural mortality in the herring stock, which takes into account herring's role as forage in the ecosystem. The Council's Herring Oversight Committee met on September 20, 2012, to discuss the SSC's ABC and control rule recommendations, and to develop additional herring specifications (e.g., ACL, OY, RSA) based on that advice.

At its September 26, 2012, meeting, the Council considered the SSC's recommendations for an ABC control rule. Based on advice from its scientific advisors, the SSC, the Council selected the ''constant catch'' ABC control rule as its preferred alternative. This rule provides consistency and potential stability to fishing industry operations and an opportunity for providing a steady supply of catch to the market. At the same time, it maintains a low probability of overfishing or the stock being overfished.

Following the Council meeting, Earth Justice (representing the plaintiffs in the litigation on Amendment 4) sent a letter to the Council commenting that the Council's consideration of ABC control rules is not consistent with the Court order to evaluate an ABC control rule for forage fish. Earth Justice provided two additional forage fish ABC control rules for the Council to consider: One based on the Lenfest Forage Fish Report; and the other used by the Pacific Fishery Management Council for coastal pelagic species. As a result, the Herring PDT reviewed these two additional forage fish ABC control rules at its October 18, 2012, meeting and recommended to the Council that: (1) These two additional ABC control rules may not be appropriate for herring; and (2) the SSC should evaluate the applicability of these control rules for herring at its November 19, 2012, meeting, both for the 2013–2015 specifications and for long-term management.

The Council also requested that the SSC evaluate the two additional ABC control rules recommended by Earth Justice. In considering the Lenfest and Pacific Council control rules in preparation for the SSC review, the Herring PDT expressed concern about adopting either of these control rules in the 2013–2015 specifications package, as either would represent a significant change in management strategy, which may not be consistent with the Council's management regime or the underlying stock assessment advice, and that adopting such a rule would require consideration of a number of factors not appropriate to the specifications process (i.e., such a potentially significant deviation from the current management regime would be better considered in a Council amendment to the FMP). The SSC carefully considered the additional two control rules it was asked to review, and concluded that forage fish control rules based on the Lenfest and Pacific Council models would yield short-term biomass projections for 2013–2015 that

are very similar to their previous ABC control rule recommendations (i.e., 75 percent of FMSY and constant catch control rules) (see Appendix II of the EA for the specifications). The SSC concluded that the 75-percent and constant catch control rules that it had already recommended to the Council are consistent with the intent of control rules recommended by Earth Justice in that they acknowledge that herring is an important forage species, take that into account, and allow for sufficient biomass through 2015 to support ecosystem considerations, including herring's forage role in the ecosystem. The SSC also noted that there are substantial differences between the two control rules and that considerably more analysis would be necessary to support applying forage fish control rules like the Lenfest and Pacific Council approaches to Atlantic herring in the future. The SSC concluded that it did not have sufficient information to evaluate the performance of the additional control rules for issues including predator-prey models, the relationship between MSY and changing natural mortality rates due to changes in consumption, and unintended consequences of treating forage species differently than other managed species. As a result, the SSC recommended to the Council that control rules for forage species such as the Lenfest and Pacific pelagics control rules should receive further evaluation prior to any potential implementation as a long-term strategy for managing herring. Based on the SSC's recommendations, the Council determined that the 75-percent and constant catch control rules adequately account for herring's role as forage (and would yield similar results to short-term application of specific forage fish control rules) and that consideration of other approaches for the long term will require additional analyses of the appropriate multiple reference points, and should be evaluated in a full Council amendment to the FMP. Section 2.2.9.1 ''Additional Alternatives for ABC Control Rule'' in the EA fully explains the Council's rationale for considering and rejecting these forage fish control rule alternatives as part of the specifications. NMFS agrees that the Council's proposed control rule for this action, which is based on the SSC's scientific advice, is the most appropriate approach at this time. NMFS also agrees with the Council's conclusions that the Council should further consider a more specific forage fish control rule, including a consideration of the implications of forage control rules on other components of the ecosystem and on the biological reference points for herring. NMFS further will urge the Council to consider this in the context of an amendment to the FMP to potentially be used when developing the 2016–2018 specifications.

The 2013–2015 specifications also address the Court order relative to AMs for the herring fishery. Due to some recent challenges monitoring the herring fishery, NMFS provided specific AM recommendations to the Council in a letter dated January 23, 2013. Herring catch exceeded one or more management area sub-ACLs in 2010 and 2011, and preliminary data indicate that 2012 catch exceeded three management area sub-ACLs, as well as the stock-wide ACL. This reflects a difficulty in monitoring this high volume fishery, in which the fleet catches and lands large volumes of fish in a very short period of time. NMFS currently monitors herring catch using a combination of daily electronic vessel reports, weekly vessel trip reports, and weekly dealer reports. Data errors in catch reports, late reporting, or non-compliance have been a challenge to monitor the fishery in real-time.

As a result, in a letter dated January 23, 2013, NMFS recommended that the Council revise its management area closure measure to be more precautionary (close the directed fishery when 92 percent, rather than 95 percent, of the area's sub-ACL is projected to be harvested) and adopt a measure that would close the directed fishery in all management areas when 92 percent of the stock-wide ACL is projected to be harvested. Additionally, the letter recommended that the Council maintain the current pound-for-pound overage deduction measure (allowing for an interim year to verify and finalize catch data) and that it not revise the overage deduction measure so that it would only require overage deductions when catch exceeded 105 percent of a management area sub-ACL.

The Council considered a range of AM alternatives for the herring fishery to help prevent ACL overages and account for overages when they do occur. The Council recommended revising the existing management area closure measure by lowering the directed herring fishery (landings >2,000 lb) closure trigger in a management area from 95 percent to 92 percent of the area's sub-ACL. The Council also recommended establishing a new AM that would close the entire directed herring fishery when 95 percent of the stock-wide ACL is harvested. Both of these measures would help prevent sub-ACL and stock-wide ACL overages that the fishery has experienced in 2010, 2011, and possibly 2012. Lastly, after considering a range of less precautionary overage deduction measures, the Council recommended maintaining the current overage deduction measure. This measure allows for an interim year to verify and finalize herring catch data before deducting overages from the sub-ACL and/or stock-wide ACL where the overage occurred, consistent with the proposed carryover provision.

At its January 29, 2013, meeting, the Council recommended the 2013–2015 specifications for the herring fishery. NMFS proposes to implement the herring specifications as recommended by the Council, as detailed in Table 1 below. For 2013–2015, the Council may annually review these specifications and recommend adjustments if necessary.

TABLE 1—PROPOSED SPECIFICATIONS

[Proposed Atlantic herring specifications (mt) for 2013–2015]

Overfishing Limit	2013—169,000. 2014—136,000. 2015—114,000.
Allowable Biological Catch	114,000.
Optimum Yield/Annual Catch Limit	107,800.
Domestic Annual Harvest	107,800.
Border Transfer	4,000.
Domestic Annual Processing	103,800.
U.S. At-Sea Processing	0.
Area 1A Sub-ACL	31,200.
Area 1B Sub-ACL	4,600.
Area 2 Sub-ACL	30,000.

TABLE 1—PROPOSED SPECIFICATIONS—Continued

[Proposed Atlantic herring specifications (mt) for 2013–2015]

Area 3 Sub-ACL	42,000.
Fixed Gear Set-Aside	295.
Research Set-Aside	3 percent of each sub-ACL.

Consistent with the SSC's advice, the Council recommended changing the OFL from 127,000 mt in 2012 to 169,000 mt in 2013, 136,000 mt in 2014, and 114,000 mt in 2015, and increasing the herring ABC from 106,000 mt in 2010–2012, to a constant level of 114,000 mt for 2013–2015. The Council believes that the buffer between OFL and ABC is reflective of scientific uncertainty. Reductions for additional sources of scientific uncertainty (e.g., biomass projections, recruitment, forage/natural mortality) were not recommended. OY may not exceed OFL and may be reduced by social, economic, or ecological factors. The Council did not recommend any additional buffers for 2013–2015, so OY is set equal to ACL. Herring regulations (§ 648.200(b)(3)) specify that the ACL is less than or equal to ABC minus expected catch in the New Brunswick weir fishery and the uncertainty around discard estimates of herring caught in Federal and state waters. The Council recommended a 6,200-mt deduction for New Brunswick weir catch based on recent performance in that fishery. Because state-only catch and herring discards are tracked against the ACL, the Council did not recommend any additional buffer between ABC and ACL to account for the uncertainty around discard estimates.

Regulations at § 648.201(f) state that if NMFS determines that the New Brunswick weir fishery landed less than 9,000 mt through October 15, NMFS shall allocate an additional 3,000 mt to the Area 1A sub-ACL in November. Because the Council recommended, and this action proposes, a much smaller deduction for New Brunswick weir catch (6,200 mt) for 2013–2015 than in past years, the previous requirement to allocate additional harvest to Area 1A if catch in the New Brunswick weir fishery is less than 9,000 mt is not appropriate for 2013–2015. Therefore, this action would remove that requirement.

BT is a processing allocation available to Canadian transport vessels and dealers. The MSA provides for the issuance of permits to Canadian vessels transporting U.S. harvested herring to Canada for sardine processing. The Council recommended the specification for BT be 4,000 mt. The amount specified for BT has equaled 4,000 mt since 2000. As there continues to be Canadian interest in transporting herring for sardine processing, the specification for BT remains unchanged.

The Herring FMP specifies that DAH will be set less than or equal to OY and be comprised of DAP and BT. Consistent with the proposed specifications for OY, the Council recommended that DAH be 107,800 mt for 2013–2015. DAH should reflect the actual and potential harvesting capacity of the U.S. herring fleet. Since 2001, total landings in the U.S. fishery have decreased, averaging 93,792 mt over the time series. Herring landings from the most recent 5-year period (2007–2011) averaged 86,373 mt. DAP is the amount of U.S. harvest that is processed domestically, as well as herring that is sold fresh (i.e., bait). DAP is calculated by subtracting BT from DAH. Using this formula, the Council recommended that DAP be 103,800 mt. NMFS concurs that the U.S. herring fishery has the capacity to harvest and process the DAH and DAP recommended by the Council, so it proposes that DAH be set at 107,800 mt and DAP be set at 103,800 mt for 2013–2015.

A portion of DAP may be specified for the at-sea processing of herring in Federal waters. When determining the USAP specification, the Council considers availability of shore-side processing, status of the resource, and opportunities for vessels to participate in the herring fishery. During the 2007–2009 fishing years, the Council maintained a USAP specification of 20,000 mt (Areas 2/3 only) based on information received about a new at-sea processing vessel that intended to utilize a substantial amount of the USAP specification. At that time, landings from Areas 2 and 3—where USAP is authorized—were considerably lower than allocated sub-ACLs (formerly TACs) for each of the past several years. Moreover, the specification of 20,000 mt for USAP did not restrict either the operation or the expansion of the shoreside processing facilities during the 2007–2009 fishing years. However, this operation never materialized, and none of the USAP specification was used during the 2007–2009 fishing years. Consequently, the Council set USAP at zero for the 2010–2012 fishing years. The Council has not received any information that would suggest changing this specification for FYs 2013–2015.

The Council recommended and NMFS is proposing a 3-percent herring research set-aside (RSA) for all management areas for fishing years 2014–2015. The research set-aside was established in Amendment 1 (0–3 percent for any management area). The herring RSA set-aside is removed from each sub-ACL prior to allocating the remaining sub-ACL to the fishery. If a proposal is approved, but a final award is not made by NMFS, or if NMFS determines that the allocated RSA cannot be utilized by a project, NMFS shall reallocate the unallocated or unused amount of the RSA to the respective sub-ACL, in accordance with the APA, provided that the additional catch can be available for harvest before the end of the fishing year for which that RSA is specified. Any unallocated or unused RSA would be re-allocated to the sub-ACL and made available to the fleet before the end of the fishing year in accordance with the APA, provided that the RSA can be available for harvest before the end of the fishing year for which the RSA is specified.

Herring regulations (§ 648.201(g)) specify that up to 500 mt of the Area 1A sub-ACL shall be allocated for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of 44° 36.2 N. Lat. and 67°16.8 W. Long. This set-aside shall be available for harvest by the fixed gear within the specified area until November 1 of each year; any unused portion of the allocation will be restored to the Area 1A sub-ACL after November 1. During 2010–2012, the fixed gear set-aside was specified at 295 mt. Because the proposed Area 1A sub-ACL for 2013–2015 is not substantially different from the Area 1A sub-ACL in 2012, the Council recommended that the fixed gear set-aside remain the same. Therefore, the Council recommended, and NMFS is proposing, that the fixed gear set-aside be set at 295 mt for 2013–2015.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has preliminarily determined that this proposed rule is

consistent with the Atlantic Herring FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows.

Statement of Objective and Need

This action proposes management measures and 2013–2015 specifications for the herring fishery. A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, are contained in the preamble to this proposed rule and are not repeated here.

Description and Estimate of Number of Small Entities To Which the Rule Will Apply

Based on 2012 permit data, the number of potential fishing vessels in each permit category in the herring fishery are as follows: 40 for Category A (limited access, All Areas); 4 for Category B (limited access, Areas 2 and 3); 45 for Category C (limited access, incidental); and 1,984 for Category D (open access). Using ownership data and this permit information, 61 entities were analyzed relative to the impacts on small entities when the Council made its recommendations on this action. Three entities, owning vessels with Category A permits, were considered large entities, as defined in section 601 of the RFA, based on the small business size standards in effect when the Council made its recommendations on this action.

The Office of Advocacy at the Small Business Administration (SBA) suggests two criteria to consider in determining the significance of regulatory impacts: Disproportionality and profitability. The disproportionality criterion compares the effects of the regulatory action on small versus large entities (using the SBA-approved size definition of ''small entity''), not the difference between segments of small entities. The changes in profits, costs, and net revenues due to Framework 2/Specifications are not expected to be disproportional for small versus large entities, as the proposed action will affect all entities, large and small, in a similar manner. As a result, this action would have proportionally similar impacts on revenues and profits of each vessel and each multi-vessel owner compared both to status quo (i.e., FY 2012) and no action levels. Therefore, this action is not expected to have disproportionate impacts or place a substantial number of small entities at a competitive disadvantage relative to large entities.

Subsequent to Council action related to this proposed rule, SBA revised its small business size standards for several industries in a final rule effective July 22, 2013 (78 FR 37398, June 20, 2013). The rule increased the size standard for Finfish Fishing from $4.0 to $19.0 million, Shellfish Fishing from $4.0 to $5.0 million, and Other Marine Fishing from $4.0 to $7.0 million. NMFS has reviewed the analyses prepared for this action in light of the new size standards. In preparing this IRFA, NMFS reviewed permit, landings, and ownership data, NMFS discovered an error in tabulating revenues and entities for 2012 and corrects the numbers in this proposed rule.

NMFS has now identified 70 entities (compared to 61 in the original analysis) that held at least one limited access herring permit (category A, B, or C) in 2012. Many of these entities were active in both finfish fishing and shellfish fishing industries. In order to make a determination of size, fishing entities are first classified as participants in either the Finfish Fishing or Shellfish Fishing industry. If an entity derives more than 50 percent of its gross revenues from shellfish fishing, the $5.0 million standard for total revenues is applied. If an entity derives more than 50 percent of its gross revenues from finfish fishing, the $19.0 million standard for total revenues is applied. Based on the revised criteria, there are 7 large shellfish fishing entities to which the proposed rule would apply. There are 63 small entities to which the proposed rule would apply.

Of the 63 small entities, 39 reported no revenue from herring during 2012. For the twenty-four (24) small entities that were active in the herring fishery, median gross revenues were approximately $872,000 and median revenues from the herring fishery were approximately $219,000. There is large variation in the importance of herring fishing for these small entities. Eight of these 24 active small entities derive less than 5 percent of their total fishing revenue from herring. Seven of these 24 active small entities derive more than 95 percent of their total fishing revenue from herring.

After considering the new information, and the new SBA size standards, NMFS does not believe that the new size standards affect the above conclusion that the proposed action would affect all entities, whether large or small, in a similar manner. NMFS solicits public comment on the analyses in light of the new size standards and revised permit and entity information.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Minimizing Significant Economic Impacts on Small Entities

Proposed Actions

Framework Adjustment 2, by allowing sub-ACL carryover, would improve profitability by allowing the industry to maximize opportunities to fish when markets are favorable. The proposed 2013–2015 herring specifications, ABC, and the corresponding sub-ACLs would increase for the upcoming 3 fishing years (106,00 mt to 114,000 mt), which could also increase profitability. The proposed AMs are expected to act as an incentive to avoid exceeding the ACL and are expected to have minimal impacts on profitability. The impacts of these measures are described below.

Seasonal Splits of Sub-ACLs

Relative to the status quo, the proposed measures, which allow for seasonal splits, may have costs to the herring industry. A seasonal split would delay harvest of herring and potentially reallocate herring effort from earlier in the season to later in the season. The purpose of this measure is to ensure that the herring sub-ACLs are not met or exceeded early in the fishing year. Prolonging the fishing season, or delaying fishing opportunities until late in the fishing year may be desirable in many cases. For example, because herring and mackerel are jointly caught at the end of the fishing year in Area 2, there may be an opportunity to increase catch by delaying some effort until later during the year to provide an opportunity to catch mackerel along with herring. Therefore, there may be benefits to fishing businesses that participate in both the herring and mackerel fishery if the Council chooses to adopt a seasonal split in Area 2, or other areas, in future actions.

The specifications for 2013–2015 implement the actual seasonal splits. The status quo for seasonal splits includes a seasonal split for Area 1A (0 percent for January–May and 100

percent for June–December), and no seasonal splits for the other areas. The proposed measures adds a seasonal split for Area 1B (0 percent January–April and 100 percent in May–December). This would delay fishing in Area 1B to allow for sufficient time for overage or carryover determinations so the industry may be better able to harvest within the sub-ACL. The proposed Area 1B split may increase user-group conflicts, particularly between the midwater trawl herring vessels and recreational anglers who utilize Area 1B in June. With the exception of 2011 and 2012, Area 1B has been open year-round to the herring fishery (only in 2012 was it closed in June) without significant conflict with the recreational fishery. However, the proposed seasonal split may increase herring vessel activity in Area 1B in June.

An Area 2 split of 67 percent in January–February and 33 percent in March–December was considered, but not selected. The seasonal splitting proposed for Area 2 could ensure herring availability towards the end of the year. This could have positive economic benefits for fishing vessels that are jointly catching herring and mackerel at the end of the calendar year.

Carryover Provisions

Relative to the status quo, the proposed measures to allow for carryover of up to 10 percent of sub-ACL benefits the herring industry by increasing operational flexibility and efficiency. For all carryover options, there are slightly higher regulatory and monitoring costs for NMFS. The Council also considered three options for how to apply the proposed carryover, which have different potential economic impacts to affected entities. Under the Preferred Option (Option 1), there would be no corresponding increase in the total stockwide ACL. Under Option 2, an increase in the total stockwide ACL would be possible and the determination would be authorized by NMFS Regional Administrator. Under Option 3, the total stockwide ACL could increase but could not exceed ABC in any fishing year. All options would provide benefits to the herring industry in terms of increased operational flexibility, higher levels of catch in subsequent years, or both. There may be moderate increases in monitoring and reporting costs which would accrue to fishery managers (NMFS) associated with these options.

Impacts of OFL/ABC Alternatives

Relative to the status quo, the proposed specifications for setting the herring ABC and OFL for 2013–2015 will result in an increase in OFL and ABC. Increasing, then maintaining a stable OFL and ABC would provide net benefits to the herring industry in the short and long term, relative to the status quo. Moderately higher amounts of catch may result in slightly lower bait costs to the lobster industry. Alternative 3 for setting ABC for 2013–2015 would also increase the amount of available catch over the three year specifications period and thereby the potential net benefits to the herring industry in the short and long term, relative to the status quo. However, Alternative 3 would provide lower net benefits than Alternative 2 because it would not provide the industry with stable market expectations and improved ability for business planning.

Sub-ACL Options

Relative to the status quo, these specifications would provide 16,600 mt of additional yield each year in 2013–2015 relative to the yield available in 2012. Increasing a sub-ACL results in positive economic impacts, if the increase translates into increased catch. Increases in sub-ACLs that are not likely to be fully utilized will provide minimal, if any, economic benefits. The values of sub-ACLs under consideration in all options are within the range of recent sub-ACLs and catches. This suggests that the herring industry could approach full utilization of the sub-ACLs under any of the options. Relative to the status quo, all other alternatives are expected to provide similar benefits because they are primarily distributive in nature.

Impacts of Other Proposed 2013–2015 Fishery Specifications

No costs or benefits are expected for the specifications of management uncertainty, RSAs, Fixed Gear Set-Aside (FGSA), DAH, BT, or USAP relative to the status quo.

Accountability Measures

The proposed measures would close the directed fishery at 92 percent of the sub-ACL. Relative to the status quo of 95 percent of the sub-ACL, this alternative may limit fishing opportunities, which would be a cost to the industry. However, this measure may also ensure that sub-ACLs are not exceeded and deducted from future ACLs. The proposed measure would close the entire fishery at 95 percent of the total stockwide ACL; this differs from the status quo because there is currently no trigger to close the directed fishery in all areas based on a percentage of the total ACL. This may impose a small short-term cost on the herring industry relative to the status quo, but there are expected to be long-term benefits from reducing ACL overages. Moreover, the 92-percent trigger for the sub-ACLs in the management areas should minimize impacts associated with closures, especially when combined with carryover provisions that are proposed in Framework 2. The Council also evaluated an option that would close the entire fishery at 92 percent of the total stockwide ACL; this would also impose a small cost on the herring industry relative to the status quo, but presumably less closing the fishery at 95 percent of the catch.

Alternative 3 would have lower costs to the herring industry but may be less effective at achieving the conservation objectives of the Herring FMP. Under Alternative 4, the closure trigger would be affected by any previous overages. This would increase the management complexity for regulators and the industry because there could be different triggers for each management area.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 29, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.14, paragraph (r)(1)(vi)(G) is added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(r) * * *

(1) * * *

(vi) * * *

(G) Fish for, possess, or retain herring in any management area during a season that has zero percent of the herring sub-ACL allocated as specified in § 648.201(d).

* * * * *

■ 3. In § 648.201, paragraphs (a)(1), (d), and (f) are revised to read as follows:

§ 648.201 AMs and harvest controls.

(a) * * * (1) *Herring sub-ACLs and ACL*—(i) *Management area closure.* If

NMFS projects that catch will reach 92 percent of the annual sub-ACL allocated to a management area before the end of the fishing year, or 92 percent of the Area 1A or Area 1B sub-ACL allocated to a seasonal period as set forth in paragraph (d) of this section, NMFS shall prohibit vessels, beginning the date the catch is projected to reach 92 percent of the sub-ACL, from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of Atlantic herring per trip in the applicable area, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(ii) *Herring fishery closure.* If NMFS projects that catch will reach 95 percent of the ACL before the end of the fishing year, NMFS shall prohibit vessels, beginning the date the catch is projected to reach 95 percent of the ACL, from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of Atlantic herring per trip in all herring management areas, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

* * * * *

(d) *Seasonal sub-ACL periods.* The sub-ACL for each herring management area may be divided into seasonal periods by month. Seasonal sub-ACLs for herring management areas, including the specification of the seasonal periods, shall be set through the annual specification process described at § 648.200. The seasonal allocation of sub-ACLs are as follows:

(1) *Area 1A:* Zero percent available for harvest during January–May; 100 percent available for harvest during June–December.

(2) *Area 1B:* Zero percent available for harvest during January–April; 100 percent available for harvest during May–December.

(3) *Area 2:* 100 percent available for harvest during January–December.

(4) *Area 3:* 100 percent available for harvest during January–December.

* * * * *

(f) *Carryover.* Subject to the conditions described in this paragraph (f), up to 10 percent of unharvested catch in a herring management area in a fishing year shall be carried over and added to the sub-ACL for that herring management area for the fishing year following total catch determination. For example, NMFS will determine total catch from 2013 during 2014, and will add carryover to the applicable sub-ACL(s) in 2015. All such carryover shall be based on the herring management area's initial sub-ACL allocation for the fishing year, not the sub-ACL as increased by carryover or decreased by an overage deduction, as specified in paragraph (a)(3) of this section. All herring landed from a herring management area shall count against that area's sub-ACL, as increased by carryover. For example, if 500 mt of herring is added as carryover to a 5,000 mt sub-ACL, catch in that management area would be tracked against a total sub-ACL of 5,500 mt. NMFS shall add sub-ACL carryover only if the ACL, specified consistent with § 648.200(b)(3), for the fishing year in which there is unharvested herring, is not exceeded. The ACL, consistent with § 648.200(b)(3), shall not be increased by carryover specified this paragraph (f).

* * * * *

[FR Doc. 2013–18655 Filed 8–1–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130711609–3609–01]

RIN 0648–BD38

Control Date for Qualifying Landings History and to Limit Speculative Entry into the Illex Squid Fishery; Atlantic Mackerel, Squid and Butterfish Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking (ANPR); request for comments.

SUMMARY: At the request of the Mid-Atlantic Fishery Management Council, this notice announces a control date that may be applicable, but not limited to, qualifying landings history for continued access to the *Illex* squid moratorium limited access permit program. NMFS intends this notice to promote awareness of possible rulemaking, alert interested parties of potential eligibility criteria for future access, and discourage speculative entry into and/or investment in the *Illex* squid fishery while the Mid-Atlantic Fishery Management Council considers if and how access to the *Illex* squid fishery should be controlled.

DATES: August 2, 2013, shall be known as the ''control date'' for the *Illex* squid fishery, and may be used as a reference date for future management measures related to the maintenance of a fishery with characteristics consistent with the Council's objectives and applicable Federal laws. Written comments must be received on or before September 3, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2013-0107 by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0107,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on *Illex* Squid Qualification Control Date.''

Fax: (978) 281–9135; Attn: Aja Szumylo.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. We may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). We accept attachments to electronic comments only in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Aja Szumylo, Fishery Policy Analyst, 978–675–9195, fax 978–281–9135.

SUPPLEMENTARY INFORMATION: The Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP) is managed by the Mid-Atlantic Fishery Management Council (Council). *Illex* squid (*Illex illecebrosus*) supports important commercial fisheries along the Atlantic coast of the United States, primarily from New Jersey to

Massachusetts, generating ex-vessel revenues in the $7.5 to $12.5 million range annually in most years since 1989. Since April 2, 1996, the Council has managed *Illex* squid under a moratorium permit to prevent overcapitalization of the fleet (65 FR 14465). The Council has considered additional capacity controls since 2003. On May 20, 2003 (68 FR 27516), NMFS published, at the request of the Council, an ANPR indicating that the Council intended to consider alternatives to further control capacity in the longfin and *Illex* fisheries. (Longfin squid is not a subject of this notice, though a longfin squid control date ANPR was recently published on May 16, 2013; 78 FR 28794.) Accordingly, May 20, 2003, was termed a ''control date,'' and notice was provided that the control date may be used for establishing eligibility criteria for determining levels of future access to the *Illex* squid, longfin squid, and butterfish fisheries, subject to Federal authority. On January 8, 2010 (75 FR 1024), NMFS published, at the request of the Council, a subsequent ANPR reaffirming the May 20, 2003, control date for both longfin and *Illex* squid fisheries.

In the case of the *Illex* squid fishery, the Council is currently concerned with excess and/or latent capacity. Since 2003, approximately 7 to 21 of the 76 *Illex* squid moratorium-permitted vessels have accounted for 95 percent of *Illex* squid landings. Activation of latent capacity, in conjunction with restrictions in other fisheries, may create a derby fishery during the period of *Illex* availability during the summer and early fall of each year. Therefore, the Council has expressed a need to examine excess capacity and/or latent capacity in the limited entry section of this fishery.

At its June 2013 meeting, the Council requested that NMFS also publish this control date to discourage speculative activation of previously unused effort or capacity in the *Illex* squid fishery while alternative management regimes to control capacity or latent effort are discussed, possibly developed, and implemented. The control date communicates to fishermen that performance or fishing effort after the date of publication may not be treated the same as performance or effort that was expended before the control date. The Council may choose to use different qualification criteria that do not incorporate the new control date. The Council could also choose to develop alternative qualification criteria based on the May 20, 2003, date and/or January 8, 2010, reaffirmation date. The Council may also choose to take no further action to control entry or access to the *Illex* squid fishery.

This notification establishes August 2, 2013, as the new control date for potential use in determining historical or traditional participation in the *Illex* squid fishery. Consideration of a control date does not commit the Council to develop any particular management regime or criteria for participation in these fisheries. The Council may choose a different control date; or may choose a management program that does not make use of such a date. Any action by the Council will be taken pursuant to the requirements for FMP development established under the Magnuson-Stevens Act.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the *Illex* squid fishery in Federal waters.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 30, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2013–18675 Filed 8–1–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 78, No. 149
Friday, August 2, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Tobacco Transition Program; Final Assessment Procedures

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice provides information about the final quarterly assessments for the Tobacco Transition Program (TTP). Through the Tobacco Transition Payment Program (TTPP), which is part of the TTP, eligible former tobacco quota holders and tobacco producers receive payments in 10 annual installments in fiscal years (FY) 2005 through 2014. To fund TTPP, the Commodity Credit Corporation (CCC) collects quarterly assessments from domestic manufacturers and importers of tobacco products. As specified in the Fair and Equitable Tobacco Reform Act of 2004 (FETRA), the Secretary must ensure the final assessment is collected no later than September 30, 2014. Also, as specified in the TTP regulations, the final two calendar quarterly payments are both due to CCC on September 30, 2014. This notice provides information about the final monthly reporting date by domestic manufacturers and importers, the final date for revisions of volume or tax data by domestic manufacturers and importers of tobacco products, and other information about how the assessment part of TTP will be operated in the final months. TTP will continue to operate as specified in existing regulations, which are not changing with this notice.

DATES: Effective August 2, 2013.

ADDRESSES: USDA Farm Service Agency, Economic and Policy Analysis Staff, 1400 Independence Ave. SW., Room 3722–S, STOP 0515, Washington, DC 20250–0515.

FOR FURTHER INFORMATION CONTACT: Darlene Soto; telephone: (202)720–0542. Persons with disabilities who require alternative means for communications (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202)720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

The TTP regulations are located in 7 CFR part 1463; TTP was authorized by Title VI of the American Jobs Creation Act of 2004 (Pub. L. 108–357). Title VI is also known as FETRA (7 U.S.C. 518–519a). FETRA repealed the tobacco marketing quota and related price support programs authorized by Title III of the Agricultural Adjustment Act of 1938 and by the Agricultural Act of 1949 and provides for payments to persons who were owners of farms with tobacco quotas (referred to as tobacco quota holders), or who produced regulated tobacco. As specified in FETRA, TTPP is funded using assessments collected quarterly from domestic tobacco manufacturers and importers.

This notice provides the following information, for domestic manufacturers and importers of tobacco products, about the conclusion of the TTP:

- Issuance of the final quarterly TTP assessment invoice,
- Final monthly reports (including final revisions of individual monthly reports),
- Final revisions of quarterly assessment calculations,
- Calculation of CCC estimated interest and actual daily net interest in calendar year 2014,
- Penalty calculations for calendar year 2014,
- Appeals or disputes, and
- Archiving of TTP assessment documents.

Issuance of Final Quarterly TTP Assessment Invoice

The 40th quarterly assessment (quarter ending December 2014 assessment) will be the final TTP assessment. FETRA and the TTP regulations in 7 CFR 1463.9(c) specify that the last assessment payment must be sent to CCC by September 30, 2014. CCC will issue the 40th (final) quarterly assessment invoice on September 1, 2014, along with the 39th quarterly assessment. Consequently, no assessment invoice will be issued in December 2014. Section 625(d)(3)(A) of FETRA specifies that the Secretary must ensure that the final assessment is collected no later than September 30, 2014, and the TTP regulations in 7 CFR 1463.8(b) specify that manufacturers and importers will receive the assessment invoice for each quarter 30 calendar days before the end of the quarter. For these reasons, as noted above, the final assessment notification must be no later than September 1, 2014.

The adjusted market share for the 39th and 40th quarterly assessment payments due on September 30, 2014, will be based on the assessed entity's market activity during April 1 to June 30, 2014. The 40th quarterly assessment will be initially determined by using the same adjusted market share of an entity that was used to determine the 39th quarterly assessment; this is the ''original'' adjusted market share for the 40th quarterly assessment (see below for information on revisions to quarterly assessments). Adjusted market share is the market share of a domestic manufacturer or domestic importer of tobacco products adjusted to reflect such entity's share of a class of tobacco during the immediately preceding calendar year quarter.

Final Individual Entity Monthly Reports

The final TTP monthly report (Tobacco Products Subject to Tax for the Tobacco Transition Assessment Program) for September 2014 will be due to CCC no later than October 20, 2014. The monthly reporting requirements are described in 7 CFR 1463.6, ''Determination of Persons Liable for Payment of Assessments.'' The reporting requirements for the final report are the same as for previous months of TTP, which are specified in the regulations.

In the event of an error on any monthly tobacco report submitted to CCC in 2014, tobacco manufacturers or importers may submit corrected or revised reports up to the final date of November 30, 2014. After this date, no revisions will be accepted.

Final Revisions of 2014 Quarterly Assessment Calculations

As noted above, the original adjusted market shares for the 40th (final) quarterly assessment payment, which is due to CCC on September 30, 2014, will

be identical to the market shares used for the 39th quarterly assessment.

Revised quarterly assessments for 2014 will be issued no later than June 1, 2015. The process is as follows. First, CCC will revise the December 2014 adjusted market shares to reflect actual removals, using monthly reports submitted by domestic tobacco manufacturers and importers for July through September 2014, and issue a revised December 2014 assessment. Next, CCC will further revise all 4 quarters of 2014 based on the actual program costs and actual interest for 2014, any revisions to any monthly tobacco reports, and will include tax and volume data received from domestic tobacco manufacturers and importers not included in previous assessment calculations (such as late reports and tax and volume data from the U.S. Department of Treasury's Alcohol and Tobacco Tax and Trade Bureau and the U.S. Department of Homeland Security's Customs and Border Protection for nonreporting entities).

Calculation of CCC Estimated Interest Costs for 2014

Though the majority of TTPP annual payments to eligible former tobacco quota holders and producers are made in January of each year, the assessment payments are not collected until March 30th, June 30th, September 30th, and December 30th. Therefore, CCC borrows funds, upfront, from the U.S. Treasury to cover these payments. Accordingly, CCC's estimated interest costs are included in the quarterly assessments. Due to the fact that the final assessment will be collected on September 30, 2014, the calculation formula for CCC's estimated interest costs will be slightly different for 2014. At the beginning of each calendar year, CCC estimates the amount of interest that will be incurred. At the end of the calendar year, CCC revises these estimates to reflect actual daily net interest, and provides revised quarterly assessments for the entire previous fiscal year. The following paragraphs explain how these calculations will be made for 2014.

The Example of Estimated Interest Computation table below shows how CCC will compute estimated quarterly interest in 2014, using an example interest rate of 0.125 percent. The actual interest rate may be higher or lower than 0.125 percent; CCC's interest borrowing rate from the United States Treasury for 2014 will be published by the USDA Farm Service Agency in January 2014 and will be available from the following Web page: *http://www.fsa.usda.gov/FSA/webapp?area=about&subject=landing&topic=sao-cc-cr*. The key element the table below shows is how the estimated interest will be calculated for the final 2 quarters of calendar year 2014. In the example shown, if interest rates are 0.125 percent, CCC interest rate costs will be approximately $75,000 less than if the 40th payment were due December 30, 2014. The table shows the overall calculations at the national level, with the estimated national assessment divided for the four estimated quarterly assessments.

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Example of Quarterly Estimated Interest Computation for 2014

a. Estimated Quarterly Assessment Payment Due Date	b. Estimated Annual Interest Rate (%)	c. Rounded Daily Interest Rate (%)	d. Estimated Remaining Balance Due of the National Assessment	e. Estimated Quarterly National Assessment	f. Days of Interest to be Calculated	g. Rounded Interest Due (Interest Started on January 15)	h. Total Estimated Quarterly Assessment
Standard interest calculation for first 2 quarters:							
30-Mar-14	0. 125	0.000342	$956,000,000	$239,000,000	75	$245,214.00	$239,245,214.00
30-Jun-14	0. 125	0.000342	$717,000,000	$239,000,000	92	$225,596.88	$239,225,596.88
Interest calculation for 3rd quarter:							
	0.125	0.000342	$478,000,000	$239,000,000	92	$150,397.92	
Interest spread from 3rd quarter over 3rd and 4th quarter assessments:							
30-Sep-14	0.125	0.000342	$478,000,000	$239,000,000		$75,198.96	$239,075,198.96
30-Sep-14	0.125	0.000342	$239,000,000	$239,000,000		$75,198.96	$239,075,198.96

NOTE: The table shows the calculations at the National level. The first 2 rows show the first 2 quarterly assessments of calendar year 2014. The last 2 rows show the calculations for the last 2 quarterly assessments for calendar year 2014. As specified in CCC regulations (7 CFR 1463.9(c)), the last 2 assessments payments will be due September 30, 2014. The table shows how CCC will adjust the interest calculations for the last 2 quarterly assessments.

Column a is the Estimated Quarterly Assessment Payment Due Date.

Column b shows the sample estimate of 0.125 percent for the U.S. Department of Agriculture's CCC borrowing rate.

Column c is the annual interest rate divided by the days in a year (Column a divided by 365)

Column d is the estimated total National Assessment remaining balance at the beginning of each quarter.

Column e is the estimated total annual National Assessment of $956M divided equally into four quarterly assessments.

Column f is the computation for the number of days since last payment due. Assessments are billed one quarter after the assessed activities took place. For example, the quarterly assessments due on March 30, 2014 are for the time period October 1 through December 31, 2013. The Estimated Interest Computation for "Days of Interest to be Calculated" is calculated with:

- Quarter 1 beginning on January 15th of each year and running through March 30. That equates to 75 days of interest to be calculated for the 1st quarter of FY 2014.
- Quarter 2 runs from April 1 through June 30, which equals 92 days.
- Quarter 3 runs from July 1 through September 30, which equals 92 days.
- The program ends on September 30, 2014; therefore, no estimated interest will be calculated past that date.

Column g is the Daily Interest Rate times the Remaining Balance Due of the Estimated National Assessment times Days of Interest to be Calculated (column c times column d times column f; the calculation is rounded to 8 decimals) for the first 3 quarters. The estimated assessments for the last 2 rows spread the 3rd quarter calculated interest over the 2 assessments as explained below.

- For the last two quarters of calendar year 2014, the interest will be calculated differently than for previous years because the last two payments will both be due September 30, 2014. CCC's estimated interest costs for calendar year 2014 will be lower than if the 40th payment were due in December, because CCC will not have any estimated interest costs after September 30, 2014.
- In the example shown, if interest rates are 0.125%, CCC interest rate costs will be approximately $75,000 less than if the 40th payment were due December 30, 2014.
- The Q3 interest will be split across the last two quarters (the 39th and 40th assessments).

Column h is the Total Quarterly Assessment, which includes interest that CCC must pay for borrowing funds.

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In order to provide quarterly revised—or true—assessments, CCC will recalculate the estimated interest based on the daily net interest for the calendar year, as well as determine the final payment amount dispersed to tobacco quota holders and producers of tobacco. After each FY closes, CCC runs a query against the accounting system to retrieve the daily TTPP disbursements paid to former tobacco quota holders and producers throughout the year. Next, CCC calculates the cumulative daily disbursements and reduces the

cumulative quarterly tobacco assessments from that activity. CCC computes daily interest against the net value of the disbursements minus the assessments. Daily interest is based on the CCC's borrowing rate from the U.S. Treasury as of January 1.

Although the last assessment payment of TTP is due on September 30, 2014, the total net interest calculations based on actual interest will include the daily net interest through December 31, 2014.

Penalty Calculations for 2014

Penalties will be issued to any manufacturer or importer that fails to submit monthly reports to CCC for any month during October 2013 through September 2014. The penalties for the failure to submit monthly tobacco reports and supporting documentation, providing false reports, or providing late reports (after the deadline of October 20, 2014) will be determined by CCC in accordance with 7 CFR 1463.10.

Appeals or Disputes

If a manufacturer or importer wishes to appeal its 39th estimated quarterly assessment (which, as noted above, will also be used as the 40th quarterly assessment), a written statement must be submitted to CCC within 30 business days from the date the manufacturer or importer received the assessment notification. CCC mails out its assessment notices several days before the end of the month; absent evidence to the contrary, the date the assessment notification was received will be deemed September 2, 2014. As a result, the deadline for appeals will be October 14, 2014, or 30 business days after actual receipt of the notice, whichever is later.

If a manufacturer or importer wishes to appeal its revised—or true—2014 quarterly assessments, it must submit a written statement within 30 business days from the date the manufacturer or importer received its revised assessment notification. Absent evidence to the contrary, the date the revised assessment notification was received will be deemed June 1, 2015. As a result, the deadline for appeals will be July 13, 2015, or 30 business days after actual receipt of the notice, whichever is later.

Appeals of TTP assessments and penalties must be in made in accordance with the provisions of 7 CFR 1463.11, except as regarding the address for submission of appeals, as noted above.

Archiving of TTP Assessment Documents

CCC will archive all records related to the assessment portion of TTP at a Federal Records Center. CCC will archive FY 2014 tobacco records on or about December 30, 2015.

Signed on: July 29, 2013.

Juan M. Garcia,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2013–18671 Filed 8–1–13; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Application Deadlines and Funding Levels for the Assistance to High Energy Cost Rural Communities and Bulk Fuel Grants

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), announces the availability of up to $7.766 million in fiscal year 2013 (FY13) for competitive grants to assist communities with extremely high energy costs and, up to $1 million in FY13 for competitive grants to state entities to establish and support a revolving fund to provide a more cost-effective means of purchasing fuel where the fuel cannot be shipped by means of surface transportation. The grant funds to assist communities with extremely high energy costs may be used to acquire, construct, extend, upgrade, or otherwise improve energy generation, transmission, or distribution facilities serving communities in which the average residential expenditure for home energy exceeds 275 percent of the national average. The grant funds to establish and support a revolving fund must be used to facilitate cost effective fuel purchases for persons, communities, and businesses in eligible areas. This notice describes the eligibility and application requirements, the criteria that will be used by RUS to award funding, and information on how to obtain application materials.

DATES: You may submit completed grant applications on paper or electronically according to the following deadlines:

• Paper applications must be postmarked and mailed, shipped, or sent overnight, no later than September 3, 2013, or hand delivered to RUS by this deadline, to be eligible under this NOFA. Late or incomplete applications will not be eligible for FY 2013 grant funding.

• Electronic applications must be submitted through Grants.gov no later than midnight September 3, 2013 to be eligible under this NOFA for FY 2013 grant funding. Late or incomplete electronic applications will not be eligible.

• Applications will not be accepted by electronic mail. Applications will be accepted upon publication of this notice until midnight (EST) of the closing date of September 3, 2013.

ADDRESSES: You may submit completed applications for grants on paper or electronically to the following addresses:

• Paper applications are to be submitted to the Rural Utilities Service, Electric Programs, United States Department of Agriculture, 1400 Independence Avenue SW., STOP 1560, Room 5165 South Building, Washington, DC 20250–1560. Applications should be marked ''Attention: High Energy Cost Grant Program'' or ''Attention: Bulk Fuel Grant Program''

• Applications may be submitted electronically through Grants.gov. Information on how to submit applications electronically is available on the Grants.gov Web site at *http://www.Grants.gov.*

Application Guides and materials may be obtained electronically through: *http://www.rurdev.usda.gov/UEP_Our_Grant_Programs.html.* Call the RUS Electric Programs at (202) 720–9545 to request paper copies of Application Guides and other materials.

FOR FURTHER INFORMATION CONTACT:

Kristi Kubista-Hovis, Senior Policy Advisor, Rural Utilities Service, Electric Programs, United States Department of Agriculture, 1400 Independence Avenue SW., STOP 1560, Room 5165 South Building, Washington, DC 20250– 1560. Telephone (202) 720–9545, Fax 202–690–0717, email *Kristi.kubista-hovis@wdc.usda.gov*

SUPPLEMENTARY INFORMATION:

Overview Information

Federal Agency Name: United States Department of Agriculture, Rural Utilities Service.

Funding Opportunity Title: Assistance to High Energy Cost Rural Communities and the Bulk Fuel Grant Program.

Announcement Type: Initial announcement.

Funding Opportunity Number: RD–RUS–HECG12.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.859. The

CFDA title for this program is ''Assistance to High Energy Cost Rural Communities.''

Dates: Applications must be postmarked and mailed or shipped, or hand delivered to the RUS, or filed with Grants.gov by September 3, 2013.

Items in Supplementary Information

I. Funding Opportunity Description

The Rural Utilities Service (RUS) is seeking applications for competitive grants under section 19 of the Rural Electrification Act of 1936 (the ''RE Act'') (7 U.S.C. 918a).

This NOFA announces the availability of FY13 grant funds, and provides an overview of the grant programs, the eligibility and application requirements, and selection criteria for grant proposals. This NOFA specifies the high energy cost and bulk fuel eligibility benchmarks and scoring criteria for FY13 grants. RUS is also making available an Application Guide with more detailed information on application requirements and copies of all required forms and certifications. The Application Guide is available on the Internet from the RUS Web site at: *http://www.rurdev.usda.gov/UEP_Our_Grant_Programs.html.* The Application Guide may also be requested from the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. For additional information, applicants should consult the program regulations at 7 CFR part 1709.

Definitions

Consult the program regulations at 7 CFR part 1709 and the Application Guide for additional definitions used in this program. As used in this NOFA:

Agency means the Rural Utilities Service (RUS) of the United States Department of Agriculture.

Application Guide means the Application Guide prepared by RUS for the high energy cost grant program or bulk fuel grant program containing detailed instructions for preparing grant applications, and copies of required forms, questionnaires, and model certifications.

Area means the geographic area to be served by the grant.

Bulk Fuel Eligible area means any area where fuel cannot be shipped routinely by means of surface transportation and must be delivered by water or air for a significant part of the year. Eligible areas include areas where fuel delivery by means of surface transportation is not practical or is prohibitively expensive and the area is primarily dependent on delivery of fuel by water or air.

Community means the unit or units of local government in which the area is located.

Extremely high energy costs means community average residential energy costs that meet or exceed one or more home energy cost benchmarks established by the Administrator at 275 percent of the national average residential energy expenditures as reported by the Energy Information Administration (EIA) of the United States Department of Energy.

Fuel means coal, oil, gasoline, and other petroleum products, and any other material that can be burned to make energy.

Home energy means any energy source or fuel used by a household for purposes other than transportation, including electricity, natural gas, fuel oil, kerosene, liquefied petroleum gas (propane), other petroleum products, wood and other biomass fuels, coal, wind, and solar energy. Fuels used for subsistence activities in remote rural areas are also included.

High energy cost benchmarks means the criteria established by the Administrator for eligibility as an extremely high energy cost community. Home energy cost benchmarks are calculated for total annual household energy expenditures; total annual expenditures for individual fuels; annual average per unit energy costs for primary home energy sources and are set at 275 percent of the relevant national average household energy expenditures.

Indian Tribe means a Federally recognized Tribe as defined under section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) to include ''* * * any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 *et seq.*], that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.''

Person means any natural person, firm, corporation, association, or other legal entity, and includes Indian Tribes and Tribal entities.

Primary home energy source means the energy source that is used for space heating or cooling, water heating, cooking, and lighting. A household or community may have more than one primary home energy source.

RE Act means the Rural Electrification Act of 1936

State entity means an agency, department, or instrumentality, or political subdivision of any of the several States of the United States or the District of Columbia, exclusive of local governments.

State rural development initiative means a rural economic development program funded by or carried out in cooperation with a State agency or Indian Tribe.

Surface transportation means transportation by road, rail, or pipeline.

Tribal entity means a legal entity that is owned, controlled, sanctioned, or chartered by the recognized governing body of an Indian Tribe.

II. Award Information

The total amount of funds available for high energy cost grants in FY13 under this notice is $7.766 million. The maximum amount of grant assistance that will be awarded for funding in a grant application under this notice is $3,000,000. The minimum amount of assistance for a grant application under this program is $50,000. The number of grants awarded under this NOFA will depend on the number of complete applications submitted, the amount of grant funds requested, the quality and competitiveness of applications submitted, and the availability of funds. Applicants are limited to one award in FY13. No funding is available for education and outreach.

The total amount of funds available for the bulk fuel revolving fund grants is $1 million. The maximum amount of grant assistance that will be awarded for

funding in a grant application under this notice is $1 million. The minimum amount of assistance for a grant application under this program is $50,000. The number of grants awarded under this NOFA will depend on the number of complete applications submitted, the amount of grant funds requested, the quality and competitiveness of applications submitted, and the availability of funds. Applicants are limited to one award in FY13.

The award period and period of performance will be from 1–3 years. Grant agreements will not be negotiated.

Applicants must provide a narrative grant proposal prepared according to the instructions in this NOFA and application guide, along with all required forms and information in order to submit a complete application.

All prior applicants must resubmit a new application to be considered for funding under this NOFA. There will be no exceptions.

All timely submitted and complete applications will be reviewed for eligibility and rated according to the criteria described in this NOFA. Applications will be ranked in order of their numerical scores on the rating criteria and forwarded to the RUS Administrator. The RUS Administrator is the federal selection official of the competitive awards. The Administrator will review the rankings and the recommendations of the rating panel. The Administrator will then fund grant applications in rank order to the extent of available funds.

The RUS reserves the right not to award all the funds made available under this notice. RUS anticipates making multiple awards. Applicants should take proper care in preparing the project's scope and cost estimate. The proposed scope and cost will not be negotiated.

III. Eligibility Information

1. Eligible Applicants for High Energy Cost Grants

Under Section 19 eligible applicants include ''Persons, States, political subdivisions of States, and other entities organized under the laws of States'' (7 U.S.C. 918a). Under section 13 of the RE Act, the term ''Person'' means ''any natural person, firm, corporation, or association'' (7 U.S.C. 913). Examples of eligible business applicants include: for-profit and non-profit business entities, including but not limited to corporations, associations, partnerships, limited liability partnerships (LLPs), cooperatives, trusts, and sole proprietorships. Eligible government applicants include State and local governments, counties, cities, towns, boroughs, or other agencies or units of State or local governments; and other agencies and instrumentalities of States and local governments. Indian Tribes, other Tribal entities and Alaska Native Corporations are also eligible applicants.

An individual is an eligible applicant under this program; however, the proposed grant project must provide community benefits and not be for the sole benefit of an individual applicant or an individual household or business.

All applicants must demonstrate the legal capacity of the applicant to execute a binding grant agreement with the federal government at the time of the award and to carry out the proposed grant funded project according to its terms.

Corporations that have been convicted of a felony (or had an officer or agency acting on behalf of the corporation convicted of a felony) within the past 24 months are not eligible. Any Corporation that has any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible.

2. Eligible Applicants for Bulk Fuel Revolving Fund Grants

Section 19 of the RE Act restricts eligible applicants to State entities, as defined above, in existence as of November 9, 2000. A state grant recipient may partner with other entities, including other government agencies in carrying out the programs funded under these grants.

3. Requirements for Both Grant Applications

All applicants for federal grants with the exception of individuals other than sole proprietorships must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying. Consistent with this Federal policy directive, any organization or sole proprietorship that applies for a high energy cost grant must use its DUNS number on the application and in the field provided on the revised Standard Form 424 (SF 424) ''Application for Federal Assistance'' to be eligible to apply. DUNS numbers are available for free to Federal Grant applicants on line at *http://fedgov.dnb.com/webform* or may be obtained through a short phone call to D&B. Please *see* the ''Get Registered'' section on Grants.gov for more information on how to obtain a DUNS number or how to verify if your organization already has a DUNS number. If you already have obtained a DUNS number in connection with the Federal acquisition process, or requested or had one assigned to you for another purpose, you should use that number on all of your applications. It is not necessary to request another DUNS number from D&B.

Applicants, whether applying electronically or by paper, must be registered in System for Award Management (SAM) (formerly the Central Contractor Registry, (CCR)) prior to submitting an application. Applicants may register for the SAM at *https://www.sam.gov/*. Completing the SAM registration process takes up to five business days, and applicants are strongly encouraged to begin the process well in advance of the deadline specified in this notice.

The SAM registration must remain active with current information at all times while RUS is considering an application or while a Federal Grant Award or loan is active. To maintain the registration in the SAM database the applicant must review and update the information in the SAM database annually from date of initial registration or from the date of the last update. The applicant must ensure that the information in the database is current, accurate, and complete.

4. Cost Sharing and Matching

No cost sharing or matching funds are required as a condition of eligibility under this grant program. However, the RUS will consider other financial resources available to the grant applicant and any voluntary pledge of matching funds or other contributions in assessing the applicant's commitment and capacity to complete the proposed project successfully include such contributions, adding additional points to their score. If a successful applicant proposes to use matching funds or other cost contributions in its project, the grant agreement will include conditions requiring documentation of the availability of the matching funds and actual expenditure of matching funds or cost contributions. RUS may require the applicant to provide additional documentation confirming the availability of any matching contribution offered prior to approval of project selection. If an applicant fails to provide timely documentation of the availability of matching contributions, the RUS may, in its sole discretion, decline to award the project if uncertainties over availability of the

match render the project financially unfeasible and impose additional conditions.

5. Other Eligibility Requirements

A. Eligible Projects for High Energy Cost Grant Applications

Grantees must use grant funds for eligible grant purposes. Grant funds may be used to acquire, construct, extend, upgrade, or otherwise improve energy generation, transmission, or distribution facilities serving eligible communities. All energy generation, transmission, and distribution facilities and equipment, used to provide electricity, natural gas, home heating fuels, and other energy service to eligible communities are eligible. Projects providing or improving energy services to eligible communities through on-grid and off-grid renewable energy projects, energy efficiency, and energy conservation projects are eligible. A grant project is eligible if it improves, or maintains energy services, or reduces the costs of providing energy services to eligible communities. Grant funds may not be used to pay utility bills or to purchase fuels. Funds may cover up to the full costs of any eligible projects subject to the statutory condition that no more than 4 percent of grant funds may be used for the planning and administrative expenses of the grantee. The program regulations at 7 CFR part 1709 provide more detail on allowable uses of grant funds, limitations on grant funds, and ineligible grant purposes. The project must serve communities that meet the extremely high energy cost eligibility requirements described in this NOFA. The applicant must demonstrate that the proposed project will benefit the eligible communities. Projects that primarily benefit a single household or business are not eligible. Additional information and examples of eligible project activities are contained in the Application Guide.

Grant funds cannot be used for: (1) Preparation of the grant application; (2) Fuel purchases, routine maintenance or other operating costs; and (3) Purchase of equipment, structures, or real estate not directly associated with provision of residential energy services. In general, grant funds may not be used to support projects that primarily benefit areas outside of eligible communities. However, grant funds may be used to finance an eligible community's proportionate share of a larger energy project. Grant funds may not be used to refinance or repay the applicant's outstanding loans or loan guarantees under the RE Act.

Each grant applicant must demonstrate the economic and technical feasibility of its proposed project. Activities or equipment that would commonly be considered as research and development activities, or commercial demonstration projects for new energy technologies will not be considered as technologically feasible projects and would, thus, be ineligible grant purposes. However, grant funds may be used for projects that involve the innovative use or adaptation of energy-related technologies that have been commercially proven. RUS, in its sole discretion, will determine if a project relies on unproven technology, and that determination shall be final.

B. Eligible Projects for Bulk Fuel Revolving Fund Grant Program

Grant funds can only be used to establish and support a revolving loan fund that facilitates cost effective fuel purchases for persons, communities, and businesses in Bulk Fuel Eligible areas. Where a recipient State entity's existing program is authorized to fund multiple purposes, grant funds may only be used to the extent the recipient funds eligible activities.

C. Eligible Communities for High Energy Cost Grants

The grant project must benefit communities with extremely high energy costs. The RE Act defines an extremely high energy cost community as one in which ''the average residential expenditure for home energy is at least 275 percent of the national average residential expenditure for home energy'' 7 U.S.C. 918a. The benchmarks are set based on the latest available information from the Energy Information Administration (EIA) residential energy surveys.

The statutory requirement that community residential expenditures for home energy exceed 275 percent of the national average establishes a very high threshold for eligibility under this program. RUS has calculated high energy cost benchmarks based on the most recent EIA national average home energy expenditure data. The current benchmarks are shown in Table 1. Applicants must demonstrate that proposed communities must meet one or more high energy cost benchmarks to qualify as an eligible beneficiary of a grant under this program. All applications must meet these current eligibility benchmarks for high energy. Based on available published information on residential energy costs, RUS anticipates that only those communities with the highest energy costs across the country will qualify.

The EIA's Residential Energy Consumption and Expenditure Surveys (RECS) and reports provide the baseline national average household energy costs that were used for establishing extremely high energy cost community eligibility criteria for this grant program. The RECS data base and reports provide national and regional information on residential energy use, expenditures, and housing characteristics. EIA published its latest available RECS home energy expenditure survey results in 2012. These estimates of home energy usage and expenditures are based on national surveys conducted in 2009 survey data and are shown in Table 1 as follows:

TABLE 1—NATIONAL AVERAGE ANNUAL HOUSEHOLD ENERGY EXPENDITURES AND EXTREMELY HIGH ENERGY COST ELIGIBILITY BENCHMARKS

[Effective for applications submitted on or After August 2, 2013]

	EIA 2009 national annual average household expenditure	RUS extremely high energy cost benchmark 275% of national average
AVERAGE ANNUAL HOUSEHOLD EXPENDITURE		
Fuel:	$ per year	$ per year
Electricity	1,340	3,685
Natural Gas	804	2,211
Fuel Oil	1,338	3,680

TABLE 1—NATIONAL AVERAGE ANNUAL HOUSEHOLD ENERGY EXPENDITURES AND EXTREMELY HIGH ENERGY COST ELIGIBILITY BENCHMARKS—Continued

[Effective for applications submitted on or After August 2, 2013]

LPG/Propane	972	2,673
Total Household Energy Use	2,024	5,566
	EIA 2009 national average unit cost	RUS extremely high energy cost benchmark 275% of national average
ANNUAL AVERAGE PER UNIT RESIDENTIAL ENERGY COSTS		
Fuel (units):	$ per unit	$ per unit
Electricity (Kilowatt hours)	.12	.33
Natural Gas (thousand cubic feet)	12.18	33.50
Fuel Oil (gallons)	2.42	6.68
LPG/Propane (gallons)	2.09	5.76
Kerosene (gallons)	2.72	7.49
Total Household Energy (million Btus)	22.59	62.12

Sources: Energy Information Administration, United States Department of Energy, *2009 Residential Energy Consumption Survey Data—Detailed Tables,* available at: *http://www.eia.gov/consumption/residential/data/2009/.*

Extremely high energy costs in rural and remote communities typically result from a combination of factors including high energy consumption, high per unit energy costs, limited availability of energy sources, extreme climate conditions, and housing characteristics. The relative impacts of these conditions exhibit regional and seasonal diversity. Market factors have created an additional complication in recent years as the prices of the major commercial residential energy sources—electricity, fuel oil, natural gas, and LPG/propane—have fluctuated dramatically in some areas.

The applicant must demonstrate that each community in the grant project's proposed area exceeds one or more of these high energy cost benchmarks to be eligible for a grant under this program.

i. High Energy Cost Benchmarks. The benchmarks measure extremely high energy costs for residential consumers. These benchmarks were calculated using EIA's estimates of national average residential energy expenditures per household and by primary home energy source. The benchmarks recognize the diverse factors that contribute to extremely high home energy costs in rural communities. The benchmarks allow extremely high energy cost communities several alternatives for demonstrating eligibility. Communities may qualify based on: Total annual household energy expenditures; total annual expenditures for commercially-supplied primary home energy sources, *i.e.,* electricity, natural gas, oil, or propane; or average annual per unit home energy costs. By providing alternative measures for demonstrating eligibility, the benchmarks reduce the burden on potential applicants created by the limited public availability of comprehensive data on local community energy consumption and expenditures.

A community or area will qualify as an extremely high cost energy community if it meets one or more of the energy cost eligibility benchmarks described below.

a. *Extremely High Average Annual Household Expenditure for Home Energy.* The area or community exceeds one or more of the following:

- Average annual residential electricity expenditure of $3,685 per household;
- Average annual residential natural gas expenditure of $2,211 per household;
- Average annual residential expenditure on fuel oil of $3,680 per household;
- Average annual residential expenditure on propane or liquified petroleum gas (LPG) as a primary home energy source of $2,673 per household; or
- Average annual residential energy expenditure (for all non-transportation uses) of $5,566 per household.

b. *Extremely High Average per unit energy costs.* The average residential per unit cost for major commercial energy sources in the area or community exceeds one or more of the following:

- Annual average cost per kilowatt hour for residential electricity customers of $0.33 per kilowatt hour (kWh);
- Annual average residential natural gas price of $33.50 per thousand cubic feet;
- Annual average residential fuel oil price of $6.68 per gallon;
- Annual average residential price of propane or LPG as a primary home energy source of $5.76 per gallon;
- Annual average residential price of Kerosene as a primary home energy source of $7.49 per gallon or
- Total annual average residential energy cost on a Btu basis of $62.12 per million Btu.[1]

ii. Supporting Energy Cost Data. The applicant must include information that demonstrates its eligibility under RUS's high energy cost benchmarks for the communities and areas. The applicant must supply documentation or references for its sources for actual or estimated home energy expenditures or equivalent measures to support eligibility. Generally, the applicant will

[1] **Note:** Btu is the abbreviation for British thermal unit, a standard energy measure. A Btu is the quantity of heat needed to raise the temperature of one pound of water 1 degree Fahrenheit at or near 39.2 degrees Fahrenheit.

be expected to use historical residential energy cost or expenditure information for the local energy provider serving the community or area to determine eligibility. Other potential sources of home energy related information include Federal and State agencies, local community energy providers such as electric and natural gas utilities and fuel dealers, and commercial publications. The Application Guide includes a list of EIA resources on residential energy consumption and costs that may be of assistance.

The grant applicant must establish eligibility for each community in the project's area. To determine eligibility, the applicant must identify each community included in whole or in part within the areas and provide supporting actual or estimated energy expenditure data for each community. The smallest area that may be designated as an area is a 2010 Census block. This minimum size is necessary to enable a determination of population size.

Potential applicants can compare the benchmark criteria to available information about local energy use and costs to determine their eligibility. Applicants should demonstrate their eligibility using historical energy use and cost information. Where such information is unavailable or does not adequately reflect the actual costs of supporting average home energy use in a local community, RUS will consider estimated commercial energy costs. The Application Guide includes examples of circumstances where estimated energy costs are used.

EIA does not collect or maintain data on home energy expenditures in sufficient detail to identify specific rural localities as extremely high energy cost communities. Therefore, grant applicants will have to provide information on local community energy costs from other sources to support their applications.

In many instances, historical community energy cost information can be obtained from a variety of public sources or from local utilities and other energy providers. For example, EIA publishes monthly and annual reports of residential prices by State and by service area for electric utilities and larger natural gas distribution companies. Average residential fuel oil and propane prices are reported regionally and for major cities by government and private publications. Many State agencies also compile and publish information on residential energy costs to support State programs.

iii. Use of Estimated Home Energy Costs. Where historical community energy cost data are incomplete or lacking or where community-wide data do not accurately reflect the costs of providing home energy services in the area, the applicant may substitute estimates based on engineering standards. The estimates should use available community, local, or regional data on energy expenditures, consumption, housing characteristics and population. Estimates are also appropriate where the area does not presently have centralized commercial energy services at a level that is comparable to other residential customers in the State or region. For example, local commercial energy cost information may not be available where the area is without local electric service because of the high costs of connection. Engineering cost estimates reflecting the incremental costs of extending service could reasonably be used to establish eligibility for areas without grid-connected electric service. Estimates also may be appropriate where historical energy costs do not reflect the costs of providing a necessary upgrade or replacement of energy infrastructure to maintain or extend service that would raise costs above one or more benchmarks. Information to support high energy cost eligibility is subject to independent review by RUS. Applications that contain information that is not reasonably based on credible sources of information and sound estimates will be rejected. Where appropriate, RUS may consult standard sources to confirm the reasonableness of information and estimates provided by an applicant in determining eligibility, technical feasibility, and adequacy of proposed budget estimates.

D. Limitations on Grant Awards

i. Statutory Limitation on Planning and Administrative Expenses for both Grants. Section 19 of the RE Act provides that no more than 4 percent of the grant funds for any project may be used for the planning and administrative expenses of the grantee.

ii. Ineligible Grant Purposes for High Energy Cost Grants. Grant funds cannot be used for: Preparation of the grant application, fuel purchases, routine maintenance or other operating costs, and purchase of equipment, structures, or real estate not directly associated with provision of residential energy services. In general, grant funds may not be used to support projects that primarily benefit areas outside of eligible communities. However, grant funds may be used to finance an eligible community's proportionate share of a larger energy project.

Consistent with USDA policy and program regulations, grant funds awarded under this program generally cannot be used to replace other USDA assistance or to refinance or repay outstanding loans under the RE Act. Grant funds may, however, be used in combination with other USDA assistance programs including electric loans. Grants may be applied toward grantee contributions under other USDA programs depending on the specific terms of those programs. For example, an applicant may propose to use grant funds to offset the costs of electric system improvements in extremely high cost areas by increasing the utility's contribution for line extensions or system expansions to its distribution system financed in whole or part by an electric loan under the RE Act. An applicant may propose to finance a portion of an energy project for an extremely high energy cost community through this grant program and secure the remaining project costs through a loan or loan guarantee from RUS or other grant sources. The determination of whether a project will be completed in this manner will be made solely by the Administrator.

iii. Maximum and Minimum Awards. For High Energy Cost Grants, the maximum amount of grant assistance that will be considered for funding per grant application under this notice is $3,000,000. The minimum amount of assistance for a competitive grant application under this program is $50,000.

For bulk fuel revolving fund grants, the maximum amount of grant assistance that will be considered for funding per grant application under this notice is $1 million. The minimum amount of assistance for a competitive grant application under this program is $50,000.

IV. SUTA

The 2008 Farm Bill (Pub. L. 110–246, codified at 7 U.S.C. 906f), authorizes the Substantially Underserved Trust Areas (SUTA) provisions, as implemented by RUS as regulation 7 CFR Part 1700, *Substantially Underserved Trust Areas* (the SUTA regulation). Under the SUTA regulation, the applicant may request the Agency apply one or more SUTA provisions to its application. To receive consideration the applicant needs to submit to RUS a completed application in compliance with 7 CFR part 1709, and include a section requesting consideration under the SUTA regulation. This section notifies RUS that the applicant is seeking consideration under the SUTA regulation and identifies the discretionary authorities the Secretary of Agriculture described in the SUTA

regulation—that it seeks to have applied to its application. In this section the applicant must include the information demonstrating eligibility for consideration under the SUTA regulation, and an explanation and documentation of the high need for the HECG or bulk fuel revolving fund benefits. RUS will review the application to determine whether the applicant is eligible to receive consideration under SUTA. RUS will notify the applicant in writing whether (1) the application is eligible to receive consideration under this subpart and if one or more SUTA requests are granted; or (2) the application is not eligible to receive further consideration under the SUTA regulation. If the SUTA request is not granted, the applicant may withdraw its application or, if the application is still eligible without SUTA consideration, request that RUS treat its application as an ordinary application for processing. For more detailed guidance on how to apply for a grant under SUTA, please refer to the 2013 FY 2013 Application Guide available at *http://www.rurdev.usda.gov/UEP_Our_Grant_Programs.html.*

V. Application and Submission Information

All applications must be prepared and submitted in compliance with this NOFA and the Application Guide. The Application Guide contains additional information on the grant programs, sources of information for use in preparing applications, examples of eligible projects, and copies of the required application forms.

1. Address To Request an Application Package

Applications materials and the Application Guide are available for download through *http://www.Grants.gov* (under CFDA No. 10.859) and on the Electric Programs Web site at: *http://www.rurdev.usda.gov/UEP_Our_Grant_Programs.html.*

Application packages, including required forms, may be also be requested from: Kristi Kubista-Hovis, Senior Policy Advisor, United States Department of Agriculture, Rural Development Utilities Programs, Electric Program, 1400 Independence Avenue SW., STOP 1560, Room 5165 South Building, Washington, DC 20250–1560. Telephone 202–720–9545, Fax 202–690–0717, email *kristi.kubista-hovis@wdc.usda.gov.*

2. Content and Form of Application Submission

Applicants must follow the directions in this notice and the Application Guide in preparing their applications and narrative proposals. The completed application package should be assembled in the order specified with all pages numbered sequentially or by section.

A. Application Contents

Applicants must submit the following information for the application to be complete and considered for funding:

i. Formatting and length of application. All applications must be on single sided pages and all pages must be numbered. Only numbered pages will be reviewed. All applications are limited to the page limits specified by each section in this NOFA. Any additional pages greater than what is specified in this NOFA will not be reviewed and considered.

ii. Part A. A Completed SF 424, ''Application for Federal Assistance.'' This form must be signed by a person authorized to submit the proposal on behalf of the applicant. **Note:** SF 424 has recently been revised to include new required data elements, including a DUNS number. You must submit the revised form. Copies of this form are available in the application package available on line through RUS's Web site or through *Grants.gov,* or by request from the RUS contact listed above.

iii. Part B. Grant Eligibility for High Energy Cost Grants (3 pages total). The Grant Eligibility is a narrative section that establishes the applicant's eligibility.

a. Project Abstract and Eligibility. This section provides a summary of the proposed project. The project must be described in sufficient detail to establish that it is an eligible project according to this NOFA.

b. Applicant Eligibility. This section includes a narrative statement that identifies the applicant and supporting evidence establishing that the applicant has or will have the legal authority to enter into a financial assistance relationship with the Federal Government. Applicants must also be free of any debarment or other restriction on their ability to contract with the Federal government. Corporations that have been convicted of a felony (or had an officer or agency acting on behalf of the corporation convicted of a felony) within the past 24 months are not eligible. Any Corporation that has any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability is not eligible.

iv. Part B. Grant Eligibility for Bulk Fuel Revolving Fund Grants (1 page total). The Grant Eligibility is a narrative section that establishes the applicant's eligibility.

a. Project Abstract and Eligibility. This section provides a summary of the proposed project.

b. Applicant Eligibility. The applicant must establish that the applicant is a State entity that was in existence as of November 9, 2000, and has the legal authority to enter into a financial assistance relationship with the Federal Government to carry out the grant activities.

3. Community Eligibility for High Energy Cost Grants.

This section provides a narrative description of the community or communities to be served by the project and supporting information to establish eligibility. The narrative must show that the proposed grant project's area or areas are located in one or more communities where the average residential energy costs exceed one or more of the benchmark criteria for extremely high energy costs as described in this NOFA. The narrative should clearly identify the location and population of the areas to be aided by the grant project and their energy costs and the population of the local government division in which they are located. Local energy providers and sources of high energy cost data and estimates should be clearly identified. Neither the applicant nor the project must be physically located in the extremely high energy cost community, but the funded project must serve an eligible community. The population estimates should be based on the results of the 2010 Census available from the U.S. Census Bureau. Additional information and exhibits supporting eligibility may include maps, summary tables, and references to statistical information from the U.S. Census, the Energy Information Administration, other Federal and State agencies, or private sources. The Application Guide includes additional information and sources that the applicant may find useful in establishing community eligibility.

A. Part C. Grant Proposal (Maximum of 30 Pages)

The grant proposal is a narrative description prepared by the applicant that describes the proposed grant

project, the potential benefits of the project, and a proposed budget. The grant proposal should contain the following sections in the order indicated.

i. Executive Summary (1 page). The Executive Summary is a one page narrative summary that: (1) Identifies the applicant, project title, and the key contact person with telephone and fax numbers, mailing address and email address; (2) specifies the amount of grant funds requested; and (3) provides a brief description of the proposed project including the eligible rural communities and residents to be served, activities and facilities to be financed, and how the grant project will offset or reduce the community's extremely high energy costs.

ii. Project Needs (2 pages). This section is a narrative that describes the needs of the community. To the maximum extent possible grant funds will be directed to the smallest communities with the lowest incomes emphasizing areas where according to the American Community Survey data by census tracts show that at least 20 percent of the population is living in poverty. This emphasis supports Rural Development's goal of providing 20 percent of its funding by 2016 to these areas of need. Applicants must also identify if their community is deemed an economic hardship community or if the community is facing an imminent hazard. A community facing economic hardship is defined as a situation where the 2000 median household income for the community is 20 percent below the State average or where the community suffers from economic conditions that severely constrain its ability to provide or improve energy facilities serving the community. Projects focused in correcting an imminent hazard are defined as projects that will correct a condition posing an imminent hazard to public safety, public welfare, the environment, or to a critical community or residential energy facility in immediate danger of failure because of a deteriorated condition, capacity limitation, or damage from a natural disaster or accident. Applicants must describe in detail and document conditions creating severe community economic hardship or imminent hazard in the proposal.

iii. Project Description (Design) (5 pages): This section must provide a narrative description of the project including a proposed scope of work identifying major tasks and proposed schedules for task completion, a detailed description of the equipment, facilities and associated activities to be financed with grant funds, the location of the eligible extremely high energy cost communities to be served, and an estimate of the overall duration of the project. The Project Design description should be sufficiently detailed to support a finding of technical feasibility. Proposed projects involving construction, repair, replacement, or improvement of electric generation, transmission, and distribution facilities must generally be consistent with the standards and requirements for projects financed with loans and loan guarantees under the RE Act as set forth in RUS's Electric Programs Regulations and Bulletins and may reference these requirements.

iv. Project Goals and objectives and Project Performance Measures (2 pages): The applicant should clearly identify how the project addresses the energy needs of the community and include appropriate measures of project success such as, for example, expected reductions in household or community energy costs, avoided cost increases, enhanced reliability, or economic or social benefits from improvements in energy services available to the community. The applicant should include quantitative estimates of cost or energy savings and other benefits. The applicant should provide documentation or references to support its statements about cost-effectiveness savings and improved services. The applicant should also describe how it plans to measure and monitor the effectiveness of the program in delivering its projected benefits.

v. Project Management (8 pages): This section must provide a narrative describing the applicant's capabilities and project management plans. The description should be broken down into the following subsections:

a. Management Plan and Schedule (2 pages). This subsection should include the application's organizational structure, method of funding, if the applicant proposes to use affiliated entities, and production schedule in implementing the grant award. If the applicant proposes to secure equipment, design, construction, or other services from non-affiliated entities, the applicant must briefly describe how it plans to procure and/or contract for such equipment or services. The applicant should provide information that will support a finding that the combination of management team's experience, financial management capabilities, resources and project structure will enable successful completion of the project.

b. Project Reporting Plan (2 pages). This subsection should provide a detailed description of the reporting requirements as well as consequences if the project falls behind.

c. Relevant Organizational Experience (2 pages). This subsection should include a detailed description of the organization that will install or implement the proposed projects. Information on success rates, past project long term viability, and consumer complaints are required. If the applicant has received any HECG funding, or other Federal funding a detailed description of past performance is required in this section.

d. Key Staff Experience (2 pages). This subsection requires bio/descriptions of all key staff and must be provided. If the applicant proposes to use affiliated entities, contractors, or subcontractors to provide services funded under the grant, the applicant must describe the identities, relationship, qualifications, and experience of these affiliated entities. The experience and capabilities of these entities will be reviewed by the rating panel.

vi. Regulatory and other approvals (2 pages). The applicant must identify any other regulatory or other approvals required by other Federal, State, local, or Tribal agencies, or by private entities as a condition of financing that are necessary to carry out the proposed grant project and its estimated schedule for obtaining the necessary approvals. Prior to the obligation of any funds for the selected proposals, applicants will be required to gather specific information in order for RUS to comply with the National Environmental Policy Act of 1969 (NEPA) and National Historic Preservation Act (NHPA), for which the provision of funding is considered an undertaking subject to review. The environmental information that must be supplied by the applicant can be found in the environmental report in the application materials.

vii. Rural development initiatives (1 page). The narrative should describe whether and how the proposed project will support any State rural development initiatives. If the project is in support of a rural development initiative, the application should include confirming documentation from the appropriate rural development agency. The application must identify the extent to which the project is dependent upon or tied to other rural development initiatives, funding and approvals. The applicant should also clarify if they are located in a rural community of less than 20,000 people or are receiving matching funds from an outside source. Projects that do not support a State rural development initiative, but are located in communities of less than 20,000, or will

receive matching funds will still receive points.

viii. Proposed Project Budget (4 pages). The applicant must submit a proposed budget for the grant program on SF 424A, ''Budget Information—Non-Construction Programs'' or SF–424C, ''Standard Form for Budget Information-Construction Programs,'' as applicable. All applicants that submit applications through *Grants.gov* must use SF–424A. The applicant should supplement the budget summary form with more detailed information describing the basis for cost estimates. The detailed budget estimate should itemize and explain major proposed project cost components such as, but not limited to, the expected costs of design and engineering and other professional services, personnel costs (salaries/wages and fringe benefits), equipment, materials, property acquisition, travel (if any), and other direct costs, and indirect costs, if any. The budget must document that planned administrative and other expenses of the project sponsor that are not directly related to performance of the grant will not total more than 4 percent of grant funds. The applicant must also identify the source and amount of any other Federal or non-Federal contributions of funds or services that will be used to support the proposed project.

ix. Supplementary Material (5 pages). Only letters of Support will be accepted as Supplementary materials. No other additional information will be accepted or reviewed. Letters from Congress will not be counted against the page limitation.

B. Part D. Additional Required Forms and Certifications

In order to establish compliance with other Federal requirements for financial assistance, the applicant must execute and submit with the initial application the following forms and certifications:

- SF 424B, ''Assurances—Non-Construction Programs'' or SF 424D, ''Assurances—Construction Programs'' (as applicable). All applicants applying through Grants.gov must use form SF 424B.
- SF LLL, ''Disclosure of Lobbying Activities.''
- ''Certification Regarding Debarment, Suspension and Other Responsibility Matter—Primary Covered Transactions'' as required under 7 CFR part 3017, Appendix A. Certifications for individuals, corporations, nonprofit entities, Indian Tribes, partnerships.
- Environmental Report. The RUS environmental report template included in the Application Guide solicits information about project characteristics and site-specific conditions that may involve environmental, historic preservation, and other resources. The information will be used by RUS's environmental staff to determine what, if any, additional environmental impact analyses may be necessary before a final grant award may be approved. A copy of the environmental report and instructions for completion are included in the Application Guide and may be downloaded from RUS's Web site or *Grants.gov.*

4. Community Eligibility for Bulk Fuel Revolving Fund Grants

This section provides a narrative description of the community or communities to be served by the revolving loan fund. Applicants must prove that the area is dependent on delivery of fuel by water or air and fuel cannot be shipped by means of surface transportation either because of physical constrains or because surface transportation is not practical or is prohibitively expensive.

A. Part C. Grant Proposal (Maximum of 26 Pages)

The grant proposal is a narrative description prepared by the applicant that describes the proposed grant project, the potential benefits of the project, and a proposed budget. The grant proposal should contain the following sections in the order indicated.

i. Executive Summary (1 page). The Executive Summary is a one page narrative summary that: (1) Identifies the State entity applying for the grant; (2) specifies the amount of grant funds requested; and (3) provides a brief description of the proposed program, including the estimated number of potential beneficiaries, their estimated fuel needs, the projects and activities to be financed through the revolving loan fund, and how the projects and activities will improve the cost effectiveness of fuel procured.

ii. Project Needs (2 pages). This section is a narrative that describes the needs of the community. To the maximum extent possible grant funds will be directed to the smallest communities with the lowest incomes emphasizing areas where according to the American Community Survey data by census tracts show that at least 20 percent of the population is living in poverty. This emphasis supports Rural Development's goal of providing 20 percent of its funding by 2016 to these areas of need. It must also describe the criteria used to identify eligible areas, including the characteristics that make fuel deliveries by surface transportation impossible or impracticable. It must also identify if the community is deemed an economic hardship community or if the community is facing an imminent hazard. A community facing economic hardship is defined as a situation where the 2010 median household income for the community is 20 percent below the State average or where the community suffers from economic conditions that severely constrain its ability to provide or improve energy facilities serving the community. Projects focused in correcting an imminent hazard are defined as projects that will correct a condition posing an imminent hazard to public safety, public welfare, the environment, or to a critical community or residential energy facility in immediate danger of failure because of a deteriorated condition, capacity limitation, or damage from a natural disaster or accident. Applicants must describe in detail and document conditions creating severe community economic hardship or imminent hazard in the proposal.

iii. Project Description (Design) (5 pages). This section must provide a narrative description of the project including the following items: (1) The legal structure and staffing of the revolving fund proposal for fuel purchase support; (2) The objectives of the project, the proposed criteria for establishing project funding eligibility and how the project is to be staffed, managed and financed: (3) How the potential beneficiaries will be informed of the availability of revolving fund benefits to them: (4) How the proposed revolving fund program will help provide a more cost-effective means of meeting fuel supply needs in eligible areas, encourage the adoption of financially sustainable energy practices, the adequate planning and investment in bulk fuel facility operations and maintenance and cost-effective investments in energy efficiency: and (5) If the revolving fund program is not yet operational, a proposed implementation schedule and milestones should be provided.

iv. Project Goals and objectives and Project Performance Measures (2 pages). The applicant should clearly identify how the project addresses the energy needs of the community and include appropriate measures of project success. The applicant should also describe how it plans to measure and monitor the effectiveness of the program in delivering its projected benefits.

v. Project Management (6 pages): This section must provide a narrative describing the applicant's capabilities and project management plans. The

description should be broken down into the following subsections:

a. Management Plan and Schedule (2 pages). This subsection should include the application's organizational structure, method of funding, if the applicant proposes to use affiliated entities, and production schedule in implementing the grant award.

b. Project Reporting Plan (2 pages). This subsection should provide a detailed description of the reporting requirements as well as consequences if the project falls behind.

c. Relevant Organizational Experience (2 pages). This subsection should include a detailed description of the organization that will oversee and implement the revolving loan fund. Applicants should note if they have received bulk fuel revolving grant funds in the past.

vi. Rural development initiatives (1 page). The narrative should describe whether and how the proposed project will support any State rural development initiatives. If the project is in support of a rural development initiative, the application should include confirming documentation from the appropriate rural development agency. The application must identify the extent to which the project is dependent upon or tied to other rural development initiatives, funding and approvals. The applicant should also clarify if they are located in a rural community of less than 20,000 people or are receiving matching funds from an outside source. Projects that do not support a State rural development initiative, but are located in communities of less than 20,000, or will receive matching funds that exceed 25 percent of the annual funding operations will still receive points.

vii. Proposed Project Budget (4 pages). The applicant must submit a proposed budget for the grant program on SF 424A, ''Budget Information—Non-Construction Programs.'' All applicants that submit applications through Grants.gov must use SF–424A. The applicant should supplement the budget summary form with more detailed information describing the basis for cost estimates. The level of detail must be sufficient for reviewers to determine that grant funds will be used only for eligible purposes and to determine the extent to which the program is entirely dependent on grant funding or whether it has financial support from the State or other sources.

viii. Supplementary Material (5 pages). Only letters of Support will be accepted as Supplementary materials. No other additional information will be accepted or reviewed. Letters from Congress will not be counted against the page limitation.

B. Part D. Additional Required Forms and Certifications

In order to establish compliance with other Federal requirements for financial assistance, the applicant must execute and submit with the initial application the following forms and certifications:

- SF 424B, ''Assurances—Non-Construction Programs'' or SF 424D, ''Assurances—Construction Programs'' (as applicable). All applicants applying through Grants.gov must use form SF 424B.
- SF LLL, ''Disclosure of Lobbying Activities.''
- ''Certification Regarding Debarment, Suspension and Other Responsibility Matter—Primary Covered Transactions'' as required under 7 CFR part 3017, Appendix A. Certifications for individuals, corporations, nonprofit entities, Indian Tribes, partnerships.
- Environmental Report. The RUS environmental report template included in the Application Guide solicits information about project characteristics and site-specific conditions that may involve environmental, historic preservation, and other resources. The information will be used by RUS's environmental staff to determine what, if any, additional environmental impact analyses may be necessary before a final grant award may be approved. A copy of the environmental report and instructions for completion are included in the Application Guide and may be downloaded from RUS's Web site or *Grants.gov.*
- AD–3030 ''Representations Regarding Felony Convictions and Tax Delinquent Status for Corporate Applicants''. This form, included in the Application Guide, assures and documents compliance with RUS's program eligibility restrictions regarding felony conviction or tax delinquent corporations on use of all RUS loans, grants and guarantees. The AD–3030 form needs to be completed if the applicant is a corporation. Corporations that have been convicted of a felony (or had an officer or agency acting on behalf of the corporation convicted of a felony) within the past 24 months are not eligible. Any Corporation that has any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability is not eligible.

5. Additional Information Requests

In addition to the information required to be submitted in the application package, the RUS may request that successful grant applicants provide additional information, analyses, forms and certifications before the grant agreement is signed and funds are obligated but after the award is subject to any environmental reviews or other reviews or certifications required under USDA and Government-wide assistance regulations. The RUS will advise the applicant in writing of any additional information required.

6. Submitting the Application

Applicants that are submitting paper application packages must submit one original application package that includes original signatures on all required forms and certifications and two copies. Applications should be submitted on 8½ x 11 inch white paper.

A completed paper application package must contain all required parts in the order indicated in the above section on ''Content and Form of Application Submission.'' The application package should be paginated either sequentially or by section. Applicants are requested to provide the application package in single-sided format for ease of copying.

Applicants that are submitting application packages electronically through the Federal grants portal Grants.gov (*http://www.Grants.gov*) must follow the application requirements and procedures and submit all the forms in the application package provided there. The Grants.gov Web site contains full instructions on all required registration, passwords, credentialing and software required to submit applications electronically. *Grants.gov* has streamlined the registration and credentialing process and now requires separate application processes for individuals and organizations. Individual applicants, including individuals applying on behalf of an organization, should follow the special directions for individuals on the *Grants.gov* Web site. Organizational applicants and sole proprietorships should follow the instructions for organizations.

Organizational applicants are advised that completion of the requirements for registration with Grants.gov, with the System for Award Management (SAM) (formerly Central Contractor Registry, (CCR)), and e-Authentication required under Grants.gov may take a week or more and may be delayed. Accordingly, RUS strongly recommends that you complete your organization's

registration with Grants.gov well in advance of the deadline for submitting applications.

7. Disclosure of Information

All material submitted by the applicant may be made available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552) and USDA's implementing regulations at 7 CFR part 1.

8. Submission Dates and Times

Applications must be postmarked or hand delivered to the RUS or posted to *Grants.gov* by September 3, 2013. RUS will begin accepting applications on the date of publication of this NOFA. RUS will accept for review all applications postmarked or delivered to us by this deadline. Late or incomplete applications will not be considered and discarded.

For the purposes of determining the timeliness of an application the RUS will accept the following as valid postmarks: the date stamped by the United States Postal Service on the outside of the package containing the application delivered by U.S. Mail; the date the package was received by a commercial delivery service as evidenced by the delivery label; the date received via hand delivery to the RUS headquarters; and the date an electronic application was posted for submission to *Grants.gov.*

9. Intergovernmental Review

This program is not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented under USDA's regulations at 7 CFR part 3015.

10. Other Submission Requirements

A completed application must contain all required parts in the order indicated in the above section on ''Content and Form of Application Submission.'' The application package should be paginated either sequentially or by section.

The completed paper application package and two copies must be delivered to the RUS headquarters in Washington, DC, using United States Mail, overnight delivery service, or by hand to the following address: Rural Utilities Service, Electric Programs, United States Department of Agriculture, 1400 Independence Avenue SW., STOP 1560, Room 5165 South Building, Washington, DC 20250– 1560. Applications should be marked ''Attention: High Energy Cost Community Grant Program'' or ''Attention: Bulk Fuel Revolving Fund Grant Program.''

Applicants are advised that regular mail deliveries to Federal Agencies, especially of oversized packages and envelopes, continue to be delayed because of increased security screening requirements. Applicants may wish to consider using Express Mail or a commercial overnight delivery service instead of regular mail. Applicants wishing to hand deliver or use courier services for delivery should contact an RUS representative in advance to arrange for building access. If an applicant wishes to submit such materials, they should contact an RUS representative for additional information.

After the grant application deadline has passed, USDA will send an electronic confirmation acknowledging that the application has been received by the RUS from Grants.gov. Grants.gov will not accept applications for filing after the deadline has passed. RUS will not accept applications directly over the Internet, by email, or fax.

Applicants should be aware that Grants.gov requires that applicants complete several preliminary registrations and e-authentication requirements before being allowed to submit applications electronically. Applicants should consult the Grants.gov Web site and allow ample time to complete the steps required for registration before submitting their applications.

Applicants may download application materials and complete forms online through Grants.gov without completing the registration requirements. Application materials prepared online may be printed and submitted in paper to RUS as detailed above.

11. Multiple Applications

Eligible applicants must include only one project per application, but the project can include many locations. For high energy cost grants, no more than $3 million in grant funds will be awarded per project application. For bulk fuel revolving fund grants, no more than $1 million in grants will be awarded per project application. An applicant will only be awarded funding for one project under this NOFA. An applicant will not receive funding for numerous projects under this NOFA.

VI. Application Review Information

After the application closing date, RUS will not consider any unsolicited information from the applicant. The RUS may contact the applicant for additional information or to clarify statements in the application required to establish applicant or community eligibility and completeness. Only applications that are complete and meet the eligibility criteria will be considered. The RUS will not accept or solicit any additional information relating to the technical merits and feasibility of the grant proposal after the application closing date.

If the RUS determines that an application package was not delivered to RUS or postmarked on or before the deadline of September 3, 2013, the application will be rejected as untimely.

After review, the RUS will reject any application package that in its sole discretion determines is not complete or that does not demonstrate that the applicant, community or project is eligible under the requirements of this NOFA and program regulations. Applicants will be notified in writing of RUS's decision. Applicants may appeal the rejection pursuant to program regulations on appeals at 7 CFR 1709.6 for the high energy cost grant program. Applicants must appeal in writing to the RUS Administrator within 10 days after the applicant is notified of the determination to reject the application. The appeal must state the basis for the appeal. Appeals must be directed to the Administrator, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Ave. SW., STOP 1500, Washington, DC 20250–1500. The Administrator will review the appeal to determine whether to sustain, reverse, or modify the original determination by the Assistant Administrator. The Administrator's decision shall be final. A written copy of the Administrator's decision will be furnished promptly to the applicant.

The panel will evaluate and rate all complete applications that meet the eligibility requirements using the selection criteria and weights described in this NOFA.

As part of the proposal review and ranking process, panel members may make comments and recommendations for appropriate conditions on grant awards to promote successful performance of the grant or to assure compliance with other Federal requirements. The decision to include panel recommendations on grant conditions in any grant award will be at the sole discretion of the RUS Administrator.

All applications will be scored and ranked according to the evaluation and scoring criteria described in this Notice. The RUS will use the ratings and recommendations of the panel to rank applicants against other applicants. All applicants will be ranked according to their scores in this round. The rankings and recommendations will then be

forwarded to the Administrator for final review and selection.

Decisions on grant awards will be made by the RUS Administrator based on the application, and the rankings and recommendations of the rating panel.

The Administrator will fund grant requests in rank order to the extent of available funds. If sufficient funds are not available to fund the next ranked project, the Administrator may, in his sole discretion, skip over that project to the next ranking project that can be fully funded with available funding.

1. Scoring Criteria

The RUS will use the selection criteria described in this NOFA to evaluate and rate applications. Applications will be reviewed in two rounds, the first round determines eligibility and the second round scores the application.

A. Determining Eligibility

To determine if the project is eligible, RUS will look only at the three page document, Part B: Grant Eligibility, which is described in this NOFA and includes narrative on the Project, Applicant, and Community eligibility. No points will be awarded in this round of review. The application is only determined to be eligible or not eligible. Applicants that are determined to be ineligible will be notified and have 10 days to appeal the decision.

B. Scoring Eligible Applicants for the High Energy Cost Grant Program

The total possible score is 100, and the applicant will be scored only on Part C: Grant Proposal as described in this NOFA. The following are the scored sections and their associated point totals:

Executive Summary	0
Project Needs	15
Project Description (Design)	20
Project Goals and objectives and Project Performance Measures	10
Project Management:	25
Management Plan and Schedule, (a subset of Project Management)	10
Project Reporting Plan (a subset of Project Management)	5
Relevant Organizational Experience (a subset of Project Management)	5
Key Staff Experience (a subset of Project Management)	5
Regulatory and other approvals	0
Rural development initiatives	20
Proposed Project Budget	10
Supplementary Material	0
Total:	100 points

C. Scoring Eligible Applicants for the Bulk Fuel Revolving Fund Grant Program

The total possible score is 100, and the applicant will be scored only on Part C: Grant Proposal as described in this NOFA. The following are the scored sections and their associated point totals:

Executive Summary	0
Project Needs	15
Project Description (Design)	20
Project Goals and objectives and Project Performance Measures	10
Project Management:	25
Management Plan and Schedule, (a subset of Project Management)	10
Project Reporting Plan (a subset of Project Management)	5
Relevant Organizational Experience (a subset of Project Management)	10
Rural development initiatives	20
Proposed Project Budget	10
Supplementary Material	0
Total:	100 points

2. Review and Selection Process

A. Score and Ranking of Applications

Applications will be scored and ranked according to the evaluation criteria and weights referenced above by a panel. The scored and ranked applications and the raters' comments will then be forwarded to the Administrator for review and selection of grant awards.

B. Selection of Grant Awards and Notification of Applicants

The RUS Administrator will review the rankings and recommendations of the applications provided by the rating panel and consistent with the requirements of this NOFA. The Administrator may return any application to the rating panel with written instruction for reconsideration if, in his sole discretion, he finds that the scoring of an application is inconsistent with this NOFA and the directions provided to the rating panel.

Following any adjustments to the project rankings. as a result of reconsideration, the Administrator will select projects for funding in rank order. If two projects from the same applicant score high enough to potentially receive funding, the Administrator will award funds to the higher of the two scoring projects. No applicant will receive more than one award.

The Administrator may decide based on the recommendations of the rating panel or, in his sole discretion, that a grant award may be made contingent upon the applicant satisfying certain

conditions. For example, RUS will not obligate funding for a selected project—such as projects requiring extensive environmental review and mitigation, preparation of detailed site specific engineering studies and designs, or requiring local permitting, or availability of supplemental financing—until any additional conditions are satisfied.

In the event that a selected applicant fails to comply with the conditions within the time set by RUS, the award will be terminated.

The RUS will notify each applicant in writing whether or not it has been selected for an award. The RUS written notice to a successful applicant of the amount of the grant award based on the approved application will constitute RUS's acceptance of a project for an award, subject to compliance with all post-award requirements including but not limited to completion of any environmental reviews and execution of a grant agreement satisfactory to the RUS. This acceptance does not bind the Government to making a final grant award. Only an agreement executed by the Administrator will constitute a binding obligation and commitment of Federal funds. Funds will not be awarded or disbursed until all requirements have been satisfied and are contingent on the continued availability of funds at the time of the award. The RUS will advise selected applicants of additional requirements or conditions.

VII. Award Administration Information

1. Award Notices

The RUS will notify all applicants in writing whether they have been selected for an award. Successful applicants will be advised in writing of their selection. Successful applicants will be required to execute an RUS grant agreement and complete additional grant forms and certifications required by USDA as part of the process.

Depending on the nature of the activities proposed by the application, the grantee may be asked to provide information and certifications necessary for compliance with RUS' Environmental Policies and Procedures at 7 CFR part 1794. Following completion of the environmental review process, selected applicants will receive a letter articulating the grant agreement and asked to execute a letter of intent to meet the grant conditions. Grant funds will not be advanced unless and until the applicant has executed a grant agreement and funds will not be advanced until all conditions have been satisfied in a manner satisfactory to RUS.

2. Administrative and National Policy Requirements

A. Environmental Review and Restriction on Certain Activities

Grant awardees will be required to submit the appropriate environmental review documentation, as outlined in the environmental report and any other following environmental impact analyses required by RUS Environmental Policies and Procedures (7 CFR Part 1794) Grantees must also agree to comply with any other Federal or State environmental laws and regulations applicable to the grant project.

In accordance with § 1794.15, applicants are restricted from taking actions that may have an adverse environmental impact or limit the choice of alternatives being considered until the environmental review process is concluded. If an applicant takes such actions, RUS will not advance grant funds.

If the proposed grant project involves physical development activities or property acquisition, the applicant is generally prohibited from acquiring, rehabilitating, converting, leasing, repairing or constructing property or facilities, or committing or expending RUS or non-RUS funds for proposed grant activities until the RUS has completed any environmental review in accordance with 7 CFR part 1794 or determined that no environmental review is required.

Successful applicants will be advised whether additional environmental review requirements apply to their proposals.

B. Other Federal Requirements

Other Federal statutes and regulations apply to grant applications and to grant awards. These include, but are not limited to, requirements under 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

Certain Office of Management and Budget (OMB) circulars also apply to USDA grant programs and must be followed by a grantee under this program. The policies, guidance, and requirements of the following, or their successors, may apply to the award, acceptance and use of assistance under this program and to the remedies for noncompliance, except when inconsistent with the provisions of the Agriculture, Rural Development and Related Agencies' Appropriations Acts, other Federal statutes or the provisions of this NOFA:

- OMB Circular No. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments);
- OMB Circular A–21 (Cost Principles for Education Institutions);
- OMB Circular No. A–122 (Cost Principles for Nonprofit Organizations);
- OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations);
- 7 CFR part 3015 (Uniform Federal Assistance Regulations);
- 7 CFR part 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally recognized Indian Tribal governments);
- 7 CFR part 3017 (Government-wide debarment and suspension (non-procurement) and Government-wide requirements for drug-free workplace (grants));
- 7 CFR part 3018 (New restrictions on Lobbying);
- 7 CFR part 3019 (Uniform administrative requirements for grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations); and
- 7 CFR part 3052 (Audits of States, local governments, and non-profit organizations).

Compliance with additional OMB Circulars or government-wide regulations may be specified in the grant agreement.

3. Reporting

The grantee will be required to provide periodic financial and performance reports under USDA grant regulations and program rules and to submit a final project performance report. The nature and frequency of required reports is established in USDA grant regulations and the project-specific grant agreements.

The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR part 170, § 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR part 170 are as follows:

a. First Tier Sub-Awards of $25,000 or more in non-Recovery Act funds (unless they are exempt under 2 CFR part 170) must be reported by the Recipient to

http://www.fsrs.gov no later than the end of the month following the month the obligation was made. Please note that currently underway is a consolidation of eight federal procurement systems, including the Sub-award Reporting System (FSRS), into one system, the System for Award Management (SAM). As a result, the FSRS will soon be consolidated into and accessed through *https://www.sam.gov/portal/public/SAM/.*

b. The Total Compensation of the Recipient's Executives (5 most highly compensated executives) must be reported by the Recipient (if the Recipient meets the criteria under 2 CFR part 170) to *https://www.sam.gov/portal/public/SAM/* by the end of the month following the month in which the award was made.

C. Total Compensation of the Subrecipient's Executives

The Total Compensation of the Subrecipient's Executives (5 most highly compensated executives) must be reported by the Subrecipient (if the Subrecipient meets the criteria under 2 CFR Part 170) to the Recipient by the end of the month following the month in which the subaward was made.

VIII. Agency Contacts

The RUS Contact for this grant announcement is Kristi Kubista-Hovis, Senior Policy Advisor, Rural Utilities Service, Electric Programs, United States Department of Agriculture, 1400 Independence Avenue SW., STOP 1560, Room 5165 South Building, Washington, DC 20250–1560. Telephone 202–720–9545, Fax 202–690–0717, email *Kristi.Kubista-Hovis@wdc.usda.gov.*

Dated:July 26, 2013.

Jessica Zufolo,

Deputy Administrator, Rural Utilities Service.

[FR Doc. 2013–18689 Filed 8–1–13; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New York Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the New York Advisory Committee to the Commission will convene at 12:00 p.m. (ET) on Thursday, August 15, 2013, at the Law Offices of Sullivan and Cromwell, 535 Madison Avenue, New York, New York. The purpose of the meeting is for orientation and project planning.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Monday, September 16, 2013. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at 202–376–7533.

Persons needing accessibility services should contact the Eastern Regional Office at least 10 working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, www.usccr.gov, or to contact the Eastern Regional Office at the above phone number, email or street address.

The meetings will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, on July 29, 2013.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2013–18587 Filed 8–1–13; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Ohio Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the Ohio Advisory Committee to the Commission will convene by conference call at 12:00 p.m. EST and adjourn at 1:00 p.m. EST on August 27, 2013. The purpose of the meeting is for the Committee to deliberate and vote on its report on barriers to entrepreneurship in Ohio. The Committee will also discuss plans for proceeding with its report on human trafficking in Ohio.

This meeting is available to the public through the following toll-free call-in number: 888–461–2024, conference ID: 5779228. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by September 6, 2013. The address is U.S. Commission on Civil Rights, Midwestern Regional Office, 55 W. Monroe St., Suite 410, Chicago, IL 60603. Comments may be emailed to *callen@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting, and they will be uploaded onto the database at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Midwestern Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Chicago, IL, July 29, 2013.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2013–18574 Filed 8–1–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The meeting is scheduled for Tuesday, August 27th, 2013, at 9:00 a.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held in Room 4830 at the U.S. Department of

Commerce, Herbert Clark Hoover Building, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Hinman, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue NW., Washington, DC 20230 (Phone: 202–482–0627; Fax: 202–482–5665; email: *maureen.hinman@trade.gov.* This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482–5225 no less than one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The meeting will take place from 9:00 a.m. to 3:30 p.m. EDT. This meeting is open to the public and time will be permitted for public comment from 3:00–3:30 p.m. EDT. Those interested in attending must provide notification by Friday, August 23, 2013 at 5:00 p.m. EDT, via the contact information provided above. Written comments concerning ETTAC affairs are welcome any time before or after the meeting. Minutes will be available within 30 days of this meeting.

Topics to be considered: The agenda for this meeting will include an overview of the new ETTAC subcommittee structure and outline issues each will undertake throughout the term. The Committee will also review the U.S. Environmental Solutions Toolkit (*www.new.export.gov*) and discuss ways to expand its reach to increase U.S. environmental exports. The status of the U.S. Environmental Export Initiative will also be discussed.

Background: The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently re-chartered until September 2014.

Man K. Cho,

Acting Office Director, Office of Energy and Environmental Industries.

[FR Doc. 2013–18609 Filed 8–1–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC786

Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Administrator), has made a preliminary determination that an Exempted Fishing Permit Application contains all the required information and warrants further consideration. This Exempted Fishing Permit would exempt participating commercial fishing vessels from the escape vent, trap limits, and trap tag requirements of the Federal lobster regulations in order to help determine the abundance and distribution of juvenile American lobsters at the Massachusetts and Rhode Island offshore wind farm area. The research is being conducted by the Commercial Fisheries Research Foundation.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before August 19, 2013.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: NERO.EFP@noaa.gov.* Include in the subject line ''Comments on CFRF Lobster EFP.''
- *Mail:* John K. Bullard, Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on CFRF Lobster EFP.''
- *Fax:* (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Maria Jacob, Environmental Technician, 978–281–9180.

SUPPLEMENTARY INFORMATION: The Commercial Fisheries Research Foundation (CFRF) submitted a complete application for an Exempted Fishing Permit on June 24, 2013. To conduct its research on the abundance and distribution of juvenile American lobster in Lobster Management Area (LMA) 2, the CFRF is requesting exemptions from the following Federal lobster regulations: (1) Gear specifications to allow for closed escape vents, as prohibited in 50 CFR 697.21(c)(2); (2) trap limits to be exceeded by 80 additional traps per fishing vessel, for a total of 240 additional traps, as prohibited in § 697.19(a)(2) for LMA 2; and (3) trap tag requirements, as specified in § 697.19(f). Escape vents are designed to allow smaller, sublegal-sized lobsters to escape standard lobster traps; therefore, closed escape vents are necessary to target juvenile American lobsters and collect information on their abundance and distribution. Federal lobster regulations also limit the number of traps that each permit holder can fish, which is based on their permit qualification. Therefore, each participating vessel would need exemptions in order to fish the survey traps in excess of their trap allocation. The wind farm development area includes 24 lease blocks, and sampling would take place with 1 trawl of 10 traps per lease block, requiring 24 trawls of 10 traps (240 traps), or 80 traps per vessel. Federal lobster regulations also require a trap tag to be fixed to each active lobster trap; however, the survey traps will remain separate from each vessel's commercial fishing traps, and would be hauled during sampling trips only. Therefore, there is no need to have these survey traps fixed with the conventional lobster trap tags. Instead, there would be identification tags fixed to each trap for identification purposes.

Funding for this pilot study would be provided through the Bureau of Ocean Energy Management. The proposed lobster sampling would take place outside of regular fishing activity, with one or two scientist(s) from the University of Rhode Island onboard each vessel. Gear would be set for a 5-day soak during regular commercial fishing trips, without a scientist onboard; however, no sampling would take place when survey gear is being set. If an EFP is granted, there would be an additional 240 modified traps in the water for 6 consecutive months (May through October), and for a 2-year study period. Each participating vessel would have eight trawls with 10 traps per trawl, consisting of 6 vent-less traps and 4 standard traps per trawl, for a total of 48 modified traps and 32 standard traps for each vessel, to be hauled after a 5-night soak. The addition of 144 modified traps and 96 standard traps in

total for all three vessels would increase the total number of traps in the fishery by 240 traps, a negligible number when compared to the current number of lobster traps deployed in the fishery.

Modifications to a conventional lobster trap would include a closed escape vent, a smaller mesh size, and a smaller entrance head. All lobsters retrieved from standard and modified traps would remain onboard for a short period of time to allow for sampling, after which they would be returned to the water.

Biological information would be collected on all lobsters, including: Carapace length; sexual determination; cull status; and presence of eggs, v-notches, and shell disease. Bycatch species would also be kept onboard for enumeration, weight collection, and measurement.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 30, 2013.

Emily H. Menashes,

Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–18656 Filed 8–1–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Climate Assessment and Development Advisory Committee

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Charter Renewal.

SUMMARY: The Department of Commerce's Chief Financial Officer and Assistant Secretary for Administration has renewed the charter for the National Climate Assessment and Development Advisory Committee (NCADAC) for a period of time that is either 90 days after the government's Third National Climate Assessment is released to the public or two years from the date of the filing of the charter with the appropriate U.S. Senate and House of Representatives oversight committees, which ever date is earlier. The NCADAC is a federal advisory committee under the Federal Advisory Committee Act (Pub. L. 92–463).

DATES: The NCADAC Charter is renewed for a period of time that is either 90 days after the government's Third National Climate Assessment is released to the public or two years from the date of the filing of the charter with the appropriate U.S. Senate and House of Representatives oversight committees, which ever date is earlier.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia J. Decker, Designated Federal Officer, National Climate Assessment and Development Advisory Committee, NOAA, Rm. 11230, R/SAB, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Email: *Cynthia.decker@noaa.gov*); or visit the NOAA NCADAC Web site at *http://www.ncadac.noaa.gov.*

SUPPLEMENTARY INFORMATION: The renewal of the charter for this time period is critical to the success of the National Climate Assessment.

No amendments were made to the Charter.

Dated: July 29, 2013.

Jason Donaldson,

Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2013–18652 Filed 8–1–13; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Climate Assessment and Development Advisory Committee

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Charter Renewal.

SUMMARY: The Department of Commerce's Chief Financial Officer and Assistant Secretary for Administration has renewed the charter for the NOAA Science Advisory Board (SAB) for a period of two years from the date of the filing of the charter with the appropriate U.S. Senate and House of Representatives oversight committees. The NOAA SAB is a federal advisory committee under the Federal Advisory Committee Act (Pub. L. 92–463).

DATES: The SAB Charter is renewed for two years from the date of the filing of the charter with the appropriate U.S. Senate and House of Representatives oversight committees.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia J. Decker, Executive Director and Designated Federal Officer, NOAA Science Advisory Board, NOAA, Rm. 11230, R/SAB, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Email: *Cynthia.decker@noaa.gov*); or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

SUPPLEMENTARY INFORMATION: The renewal of the charter for this time period is critical to the success of NOAA.

Only one amendment was made to the charter.

Under Section 9, Estimated Number and Frequency of Meetings, language has been revised to state ''The SAB will meet approximately three times each year in person if possible.'' This reflects the need for the Board members to regularly gather together for their meetings but also allows room for those meetings to be fewer than three per year and virtual, if necessary. The SAB will continue to have ad hoc virtual meetings in between the in-person meetings as necessary.

Dated: _July 29, 2013.

Jason Donaldson,

Chief Financial Officer/Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2013–18653 Filed 8–1–13; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BA53

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the South Atlantic States; Amendment 22

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Supplemental Notice of Intent (NOI) to prepare a draft environmental impact statement (DEIS); request for comments.

SUMMARY: NMFS, Southeast Region, in collaboration with the South Atlantic Fishery Management Council (Council), is publishing this supplemental NOI to

provide notice to the public of the broadened scope of Amendment 22 to the Fishery Management Plan for the Snapper-Grouper Fishery in the South Atlantic Region (Amendment 22) and to solicit public comments on the scope of issues to be addressed in the DEIS. The Council modified Amendment 22 to include all snapper-grouper species with low annual catch limits (ACLs), not just red snapper, in a harvest tag program. The intent of Amendment 22 is to closely control recreational harvest of snapper-grouper species with low ACLs.

DATES: Written comments on the scope of issues to be addressed in the DEIS will be accepted until September 3, 2013.

ADDRESSES: You may submit comments on this document, identified by ''NOAA–NMFS–2010–0264'', by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA–NMFS–2013–0264,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kate Michie, Southeast Regional Office, telephone: 727–824–5305, or email: *kate.michie@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

An NOI to prepare a DEIS for Amendment 22 was published on January 3, 2011 (76 FR 101). The NOI listed several options the Council could consider when addressing long-term management for red snapper, including trip limits, bag limits, a catch share program, temporal and spatial closures including those to protect spawning stocks, a tag program, and gear prohibitions. Subsequent to the publication of the 2011 NOI, the Council modified the amendment to remove all species-specific options and create a harvest tag program that could be applied to any snapper-grouper species with small recreational ACLs. Based on these modifications, NMFS is publishing this supplemental NOI to provide notice to the public of the broadened scope of Amendment 22 and to solicit public comments on the scope of issues to be addressed in the DEIS.

In Amendment 22, the Council is considering actions to establish a framework for a recreational harvest tag program that could be applied to any snapper-grouper species that have low ACLs, for example snowy grouper, golden tilefish, and wreckfish. The Council is also considering development of a recreational data collection program that would be linked to the use of harvest tags.

Recreational Harvest Tag Program Framework

Under the Council's purview are several snapper-grouper species with very low recreational ACLs, which are difficult to monitor to prevent the ACLs from being exceeded and triggering accountability measures (AMs). AMs that would reduce the following season's ACL, or shorten the length of the recreational season following an ACL overage, could have adverse economic and social impacts on fishery participants. Additionally, exceeding recreational ACLs could have negative biological effects for the affected species, because the ACLs implemented are intended to prevent overfishing.

Therefore, the Council is considering establishing a framework for a recreational harvest tag program that could be applied to any snapper-grouper species with low recreational ACLs. The intent of such a program is to control recreational harvest by issuing a specific number of harvest tags to individuals or entities that wish to fish for those snapper-grouper species. Each tag would allow its holder to harvest a pre-determined number of a particular species. Only tag holders would be allowed to harvest species included in the tag program.

Harvest Tag Issuance Criteria

The Council is also considering how tags should be distributed and what the process of tag issuance would entail. Amendment 22 contains several options that could be applied to a tag issuance process.

Data Collection

In addition to the use of harvest tags, the Council is considering adding a data collection component that could be tied to the tag program. Amendment 22 contains options for voluntary and required data collection methods that would apply to tag holders.

NMFS, in collaboration with the Council, will develop a DEIS to describe and analyze alternatives to address the management needs described above. Those alternatives will include a ''no action'' alternative for each action. In accordance with NOAA's Administrative Order 216–6, Section 5.02(c), Scoping Process, NMFS, in collaboration with the Council, has identified preliminary environmental issues as a means to initiate discussion for scoping purposes only. These preliminary issues may not represent the full range of issues that eventually will be evaluated in the DEIS.

After the DEIS associated with Amendment 22 is completed, it will be filed with the Environmental Protection Agency (EPA). After filing, the EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register**. The DEIS will have a 45-day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Council and NMFS will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS), and before voting to submit the final amendment to NMFS for Secretarial review, approval, and implementation. NMFS will announce in the **Federal Register** the availability of the final amendment and FEIS for public review during the Secretarial review period, and will consider all public comments prior to final agency action to approve, disapprove, or partially approve the final amendment.

NMFS will announce, through a document published in the **Federal Register**, all public comment periods on the final amendment, its proposed implementing regulations, and the availability of its associated FEIS. NMFS will consider all public comments received during the Secretarial review period, whether they are on the final

amendment, the proposed regulations, or the FEIS, prior to final agency action.

Public Hearings, Times, and Locations

The Council will hold public hearings to discuss the actions included in Amendment 22. Exact dates, times, and locations will be announced by the Council. The public will be informed, via a notification in the **Federal Register**, of the exact times, dates, and locations of future scoping meetings and public hearings for Amendment 22.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 29, 2013.

Emily H. Menashes,

Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–18676 Filed 8–1–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BD07

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the South Atlantic States; Regulatory Amendment 14

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice announcing the preparation of an environmental assessment (EA).

SUMMARY: NMFS, in cooperation with the South Atlantic Fishery Management Council (Council), is preparing an EA in accordance with the National Environmental Policy Act (NEPA) for Regulatory Amendment 14 to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Regulatory Amendment 14). This notice is intended to inform the public of the change from the preparation of a draft environmental impact statement (EIS) to an EA for Regulatory Amendment 14.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, Southeast Regional Office, telephone: 727–824–5305, or email: *nikhil.mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: On April 17, 2013, NMFS and the Council published a Notice of Intent (NOI) in the **Federal Register** (78 FR 22846), to prepare a draft EIS for Regulatory Amendment 14. Regulatory Amendment 14 was being developed to address management measures to modify the fishing year for greater amberjack; revise the minimum size limit measurement for gray triggerfish; increase the minimum size limit for hogfish; adjust the commercial fishing season for vermilion snapper; modify the aggregate grouper bag limit; and revise the accountability measures (AMs) for gag and vermilion snapper. Regulatory Amendment 14 was also being developed to modify the commercial and recreational fishing years for black sea bass, and the alternatives considered could have resulted in black sea bass pots being fished during large whale migration and the right whale calving season.

Subsequent to the publication of the NOI, the Council modified the amendment by removing actions regarding gray triggerfish, hogfish, and grouper aggregate recreational bag limits, due to on-going and anticipated stock assessments for these species. Furthermore, on May 13, 2013, the Council approved Regulatory Amendment 19 to the FMP. In this amendment, the Council approved an action to implement a seasonal closure (November 1 through April 30) for the commercial black sea bass pot component of the snapper-grouper fishery. The seasonal closure would address potential gear interactions with large whale migration and right whales during calving season. If NMFS decides to publish a final rule to implement Regulatory Amendment 19, that final rule would likely become effective in 2013. It is anticipated that rulemaking to implement Regulatory Amendment 14 would occur in 2014, and therefore, alternatives in Regulatory Amendment 14 that would modify the commercial fishing year for black sea bass would no longer be a concern for protected species.

Actions in the EA for Regulatory Amendment 14 would now modify the commercial and recreational fishing year for greater amberjack; modify the commercial and recreational fishing years for black sea bass; change the commercial fishing season for vermilion snapper; modify trip limits for gag; and revise the recreational AMs for black sea bass and vermilion snapper. These actions would ensure fishing opportunities are extended during optimal times of the year, while ensuring that overfishing does not occur, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

Consequently, NMFS and the Council are initially preparing an EA rather than proceeding with the development of a draft EIS. If the EA results in a Finding of No Significant Impact (FONSI), the EA and FONSI will be the final environmental documents required by NEPA. If the EA reveals that significant environmental impacts may be reasonably expected to result from the proposed actions, NMFS and the Council will develop a draft EIS to further evaluate those impacts.

The Council will hold public hearings to discuss the actions included in Regulatory Amendment 14. Exact dates, times, and locations will be announced by the Council. The public will be informed, via a notification in the **Federal Register**, of the exact times, dates, and locations of future public hearings for Regulatory Amendment 14.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 29, 2013.

Emily H. Menashes,

Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–18673 Filed 8–1–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC790

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: This notice advises the public that the Western Pacific Fishery Management Council (Council) will convene meetings of the Northern Mariana Islands Regional Ecosystem Advisory Committee (REAC) in Saipan, Commonwealth of the Northern Mariana Islands.

DATES: The REAC meeting will be held Thursday, August 22, 2013. For the specific dates, times, and agendas for the meetings see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meetings of the CNMI REAC will be held at the Multipurpose Center, Susupe, CNMI.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808)522–8220.

SUPPLEMENTARY INFORMATION:

Schedule and Agenda for CNMI REAC Meeting

9 a.m.–3 p.m. Thursday, August 22, 2013

1. Welcome and Introduction

2. Status Report on 157th Council Meeting Recommendations regarding CNMI
3. CNMI Commercial Dock Development Study
   A. Contract and Project Status
   B. Overview of draft Dock Development Plan Study
   i. Existing Conditions (Sites, Loading, Design Criteria, Mooring, Berthing, Utilities, etc)
   ii. Land-side support facilities
   a. Outer Cove Mariana
   b. Puerto Rico Dump
   c. Echo Dock
   d. Sea Plan Ramp
   iv. Environmental Consideration and Permits
   v. Discussion on Preferred Site Location
   C. Evaluation of Preliminary Alternatives
   D. Discussion on Preferred Site Location
4. Council Coral Reef Grant Priorities and Projects
5. Revising the Large Vessel Closure for CNMI Bottomfish
6. Other Business
7. Public Comment
8. Discussion and Recommendations

The order in which agenda items are addressed may change. Public comment periods will be provided throughout each agenda. The REAC will meet as late as necessary to complete scheduled business.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808)522–8220 (voice) or (808)522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 30, 2013.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–18654 Filed 8–1–13; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 9/2/2013

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On 5/31/2013 (78 FR 32631–32632); 6/7/2013 (78 FR 34350–34351); and 6/21/2013 (78 FR 37524–37525), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Aircraft Floor Board Kits

NSN: 1560–00–NIB–0001—KC–135 Floor Board Kit, 848 sq ft.
NSN: 1560–00–NIB–0002—KC–135 Floor Board Kit, 849 sq ft.
NSN: 1560–00–NIB–0003—KC–135 Floor Board Kit, 875 sq ft.
NSN: 1560–00–NIB–0004—KC–135 Floor Board Kit, 876 sq ft.
NPA: San Antonio Lighthouse for the Blind, San Antonio, TX
Contracting Activity: Dept of the Air Force, FA8126 AFSC PZIMB, Tinker Air Force Base, OK
Coverage: C-List for 100% of the requirement of Tinker Air Force Base as aggregated by the Oklahoma City Air Logistics Center (FA8126 AFSC PZIMB), Tinker Air Force Base, OK.

Services

Service Type/Location: Janitorial/Custodial Service, Drug Enforcement Agency (DEA) Aviation Facility, 2300 Horizon Drive, Fort Worth, TX.
NPA: Crossroads Diversified Service, Inc., Sacramento, CA
Contracting Activity: Dept of Justice, Headquarters-Drug Enforcement Administration, Arlington, VA
Service Type/Location: Grounds and Tree Maintenance Service, National Oceanic and Atmospheric Administration, Daniel K. Inouye Regional Center, 1876 Wasp Blvd., Honolulu, HI.
NPA: Lanakila Pacific, Honolulu, HI
Contracting Activity: Dept of Commerce, National Oceanic and Atmospheric Administration, Seattle, WA
Service Type/Location: Janitorial/Custodial Service, Missouri River Area Office, 790 E. Highway 224, Napoleon, MO.
NPA: Cooperative Workshops, Inc., Sedalia, MO
Contracting Activity: Dept of the Army, W071 ENDIST Kansas City, Kansas City, MO

Deletions

On 5/31/2013 (78 FR 32631–32632); 6/7/2013 (78 FR 34350–34351); and 6/21/2013 (78 FR 37524–37525), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or

other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 USC 8501–8506) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

Yardstick

NSN: 5210–00–243–3349
NPA: Northeastern Michigan Rehabilitation and Opportunity Center (NEMROC), Alpena, MI
Contracting Activity: General Services Administration, Kansas City, MO

Scarf, Headover

NSN: 8440–01–291–5451
NPA: ASPIRO, Inc., Green Bay, WI
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA

Scouring Powder

NSN: 7930–01–294–1115
NPA: NONE
Contracting Activity: General Services Administration, Fort Worth, TX

Socks and Gloves, Chemical Protective

NSN: 8415–01–509–2875—Socks, CPU, Army, Gray, XSS
NSN: 8415–01–509–2877—Socks, CPU, Army, Gray, S
NSN: 8415–01–509–2879—Socks, CPU, Army, Gray, M
NSN: 8415–01–509–2882—Socks, CPU, Army, Gray, L
NSN: 8415–01–509–2883—Socks, CPU, Army, Gray, XL
NSN: 8415–01–509–2898—Gloves, CPU, Army, Gray, XS
NSN: 8415–01–509–2902—Gloves, CPU, Army, Gray, S
NSN: 8415–01–509–2904—Gloves, CPU, Army, Gray, M
NSN: 8415–01–509–2905—Gloves, CPU, Army, Gray, L
NSN: 8415–01–509–2916—Gloves, CPU, Army, Gray, XL
NPA: Industrial Opportunities, Inc., Andrews, NC
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA

Test Set, Lead

NSN: 6625–01–121–0510
NSN: 6625–00–395–9313
NPA: Elwyn, Inc., Aston, PA
Contracting Activity: Defense Logistics Agency Land and Maritime, Columbus, OH

Ribbon, Typewriter

NSN: 7510–01–219–2309
NPA: Charleston Vocational Rehabilitation Center, North Charleston, SC
Contracting Activity: General Services Administration, New York, NY

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2013–18650 Filed 8–1–13; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete products and services from the Procurement List that were previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: 9/2/2013.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 USC 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSN: 7530–00–281–5908—Folder, File, Paperboard, Heavy Duty, 1/3 Cut Tab, Clear Sleeve, Kraft, Legal
NSN: 7530–00–281–5968—Folder, File, Paperboard, 1/3 Cut Tab, Clear Sleeve, Kraft, Letter
NPA: L.C. Industries for the Blind, Inc., Durham, NC
Contracting Activity: GENERAL SERVICES ADMINISTRATION, NEW YORK, NY

Stamp, Custom, Pre-Inked

NSN: 7510–01–368–3504—Ink Refill, Stamp, Pre-inked, Blue
NSN: 7510–01–381–8032—Ink Refill, Stamp, Pre-inked, Black
NSN: 7510–01–381–8062—Ink Refill, Stamp, Pre-inked, Red
NSN: 7520–01–419–6746—Stamp, Custom-made, Pre-inked, 1 5/8″ x 4″
NPA: Industries of the Blind, Inc., Greensboro, NC
Contracting Activities: DEPARTMENT OF VETERANS AFFAIRS, NAC, HINES, IL GENERAL SERVICES ADMINISTRATION, NEW YORK, NY

Stamp Kit, Tile Stamp

NSN: 7520–01–453–1967—4 PC STAMPS KIT, ''ROUTE–IT SET''
NSN: 7520–01–453–1968—4 PC STAMPS KIT, ''ACCOUNTANT SET''
NSN: 7520–01–453–1969—4 PC STAMPS KIT, ''MAIL ROOM SET''
NPA: Industries of the Blind, Inc., Greensboro, NC
Contracting Activity: GENERAL SERVICES ADMINISTRATION, NEW YORK, NY

NSN: 7530–00–238–4319—Card, Index
NPA: Louisiana Association for the Blind, Shreveport, LA
Contracting Activity: GENERAL SERVICES ADMINISTRATION, NEW YORK, NY

NSN: 7930–01–418–1102—EcoLab Water Soluble Cleaners/Detergents
NPA: Association for the Blind and Visually Impaired—Goodwill Industries of Greater Rochester, Rochester, NY
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FORT WORTH, TX

Safety-Walk, Tapes & Treads

NSN: 7220–00–NIB–0136—710 Black Coarse Tape
NSN: 7220–00–NIB–0137—610 Black General Purpose
NSN: 7220–00–NIB–0138—620 Clear General Purpose
NSN: 7220–00–NIB–0139—630 Yellow General Purpose
NSN: 7220–00–NIB–0140—660 Brown General Purpose
NSN: 7220–00–NIB–0141—510 Black Conformable
NSN: 7220–00–NIB–0043—620 Clear General Purpose
NSN: 7220–00–NIB–0044—620 Clear General Purpose
NSN: 7220–00–NIB–0045—620 Clear General Purpose
NPA: Louisiana Association for the Blind, Shreveport, LA
Contracting Activity: GENERAL SERVICES ADMINISTRATION, NEW YORK, NY

Services

Service Type/Location: Custodial Service, Akron Canton Regional Airport, 5400 Lauby Road NW., North Canton, OH.
NPA: The Workshops, Inc. Canton, OH (Deleted)
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR, WASHINGTON, DC

Service Type/Location: Microfilming Tax Forms Service, Internal Revenue Service, Cincinnati, OH.
NPA: Richland County Board of Developmental Disabilities, Mansfield, OH (Deleted)
Contracting Activity: DEPARTMENT OF THE

TREASURY, WASHINGTON, DC

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2013–18651 Filed 8–1–13; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0127]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service (DFAS), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the DFAS announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 1, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Finance and Accounting Services -IN, 8899 E. 56th Street, Indianapolis, IN 46249–0201 ATTN: Joseph Frietze. He can be reached via email at *joseph.frietze@dfas.mil* or by phone at (317) 212–5689.

Title; Associated Form; and OMB Number: Customer Satisfaction Surveys-Generic Clearance, OMB Number 0730–0003.

Needs and Uses: The information collection requirement is necessary to determine the kind and quality of services DFAS customers want and expect, as well as their satisfaction with DFAS' existing services. With the cooperation of the Office of Personnel Management (OPM), DFAS conducts annual Customer Satisfaction Surveys of various customer populations, expected to number 10 separate surveys per year, administered during May of each year. In addition, with the cooperation of Defense Information Systems Agency (DISA), DFAS maintains ongoing Interactive Customer Experience (ICE) comment cards available for as needed customer comments. DFAS expects to maintain 60 external comment cards per year for the duration of the license.

Affected Public: Individuals or Households, Businesses or other For-Profit, Not-For-Profit institutions, Federal Government, and State, Local or Tribal Governments.

Annual Burden Hours: 30,667/yr (92,000 over 3 yrs).

Number of Respondents: 230,000/yr (690,000 over 3 yrs).

Responses Per Respondent: 1/yr (3 over 3 yrs).

Average Burden Per Response: 8 minutes.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

DFAS will conduct a variety of customer satisfaction surveys via multiple methods (internet, telephone and paper/pencil administration). If the customer feedback activities were not conducted, DFAS would not only be in violation of E.O. 12862, but would also not have the knowledge necessary to provide the best service possible and provide unfiltered feedback from the customer for process improvement activities. The information collected provides information about customer perceptions and can help identify agency operations that need quality improvement, provide early detection of process or system problems, and focus attention on areas where customer service and functional training or changes in existing operations will improve service delivery.

Dated: July 30, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–18680 Filed 8–1–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the National Commission on the Structure of the Air Force

AGENCY: Director of Administration and Management, DoD.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense (DoD) announces that the following Federal advisory committee meeting of the National Commission on the Structure of the Air Force (''the Commission'') will take place.

DATES: *Date of Open Meeting, including Hearing and Commission Discussion:* Tuesday, August 20, 2013, from 1:00 p.m. to 5:00 p.m. Registration will begin at 12:30 p.m.

ADDRESSES: Reed Conference Center, 5800 Will Rogers Road, Midwest City, Oklahoma 73110.

FOR FURTHER INFORMATION CONTACT: Mrs. Marcia Moore, Designated Federal Officer, National Commission on the Structure of the Air Force, 1950 Defense Pentagon, Room 3A874, Washington, DC 20301–1950. Email: *dfoafstrucomm@osd.mil.* Desk (703) 545–9113. Facsimile (703) 692–5625.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: The members of the Commission will hear testimony from individual witnesses and then will discuss the information presented at the hearings.

Agenda

A subset of members from the Commission will tour Tinker Air Force Base on August 19, 2013. The hearing and meeting on August 20, 2013 includes representatives from the Air Force base, local and state leaders, and the National Guard and reserve units who have been asked to testify and address the evaluation factors under consideration by the Commission for a

U.S. Air Force structure that—(a) meets current and anticipated requirements of the combatant commands; (b) achieves an appropriate balance between the regular and reserve components of the Air Force, taking advantage of the unique strengths and capabilities of each; (c) ensures that the regular and reserve components of the Air Force have the capacity needed to support current and anticipated homeland defense and disaster assistance missions in the United States; (d) provides for sufficient numbers of regular members of the Air Force to provide a base of trained personnel from which the personnel of the reserve components of the Air Force could be recruited; (e) maintains a peacetime rotation force to support operational tempo goals of 1:2 for regular members of the Air Forces and 1:5 for members of the reserve components of the Air Force; and (f) maximizes and appropriately balances affordability, efficiency, effectiveness, capability, and readiness. Individual Commissioners will also report their activities, information collection, and analyses to the full Commission.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space, the meeting is open to the public. The building is fully handicap accessible. Several public parking facilities are nearby.

Written Comments: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments to the Commission in response to the stated agenda of the open meeting or the Commission's mission. The Designated Federal Officer (DFO) will review all submitted written statements. Written comments should be submitted to Mrs. Marcia Moore, DFO, via facsimile or electronic mail, the preferred modes of submission. Each page of the comment must include the author's name, title or affiliation, address, and daytime phone number. All contact information may be found in the **FOR FURTHER INFORMATION CONTACT** section.

Oral Comments: In addition to written statements, one hour will be reserved for individuals or interested groups to address the Commission on August 20, 2013. Interested oral commenters must summarize their oral statement in writing and submit with their registration. The Commission's staff will assign time to oral commenters at the meeting, for no more than 5 minutes each. While requests to make an oral presentation to the Commission will be honored on a first come, first served basis, other opportunities for oral comments will be provided at future meetings.

Registration: Individuals who wish to attend the public hearing and meeting on Tuesday, August 20, 2013 are encouraged to register for the event in advance with the Designated Federal Officer, using the electronic mail and facsimile contact information found in **FOR FURTHER INFORMATION CONTACT.** The communication should include the registrant's full name, title, affiliation or employer, email address, and daytime phone number. If applicable, include written comments and a request to speak during the oral comment session. (Oral comment requests must be accompanied by a summary of your presentation.) Registrations and written comments must be typed.

Background

The National Commission on the Structure of the Air Force was established by the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239). The Department of Defense sponsor for the Commission is the Director of Administration and Management, Office of the Secretary of Defense. The Commission is tasked to submit a report, containing a comprehensive study and recommendations, by February 1, 2014 to the President of the United States and the Congressional defense committees. The report will contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions it may consider appropriate in light of the results of the study. The comprehensive study of the structure of the U.S. Air Force will determine whether, and how, the structure should be modified to best fulfill current and anticipated mission requirements for the U.S. Air Force in a manner consistent with available resources.

Dated: July 30, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–18639 Filed 8–1–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0171]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to amend a System of Records.

SUMMARY: The Defense Information Systems Agency is amending a system of records notice, KD3D.01, Continuity of Operations Plans, in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This system will apprise the Continuity of Operations Office designated personnel of their responsibilities and relocation assignments in conditions of emergency; and incorporate the Continuity of Operations Office plans from agency field offices.

DATES: This proposed action will be effective on September 3, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before September 3, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette Weathers-Jenkins, DISA Privacy Officer, Chief Information Office, 6916 Cooper Avenue, Fort Meade, MD 20755–7901, or by phone at (301) 225–8158.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpclo.defense.gov/privacy/SORNs/component/disa/index.html.* The proposed changes to the record system being amended are set forth in this notice. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 30, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

KD3D.01

SYSTEM NAME:

Continuity of Operations Plans (August 22, 2000, 65 FR 50974).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Defense Information Systems Agency, Continuity of Operations (COOP), OPS/GO51, 6910 Cooper Ave, Fort Meade, MD 20755–7901.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Defense Information Systems Agency, Continuity of Operations (COOP), OPS/GO51, 6910 Cooper Ave, Fort Meade, MD 20755–7901.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Continuity of Operations Planning (COOP), Defense Information Systems Agency, 6910 Cooper Ave, Fort Meade, MD 20755–7901.

The request should include the individual's full name.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Continuity of Operations Planning (COOP), Defense Information Systems Agency, 6910 Cooper Ave, Fort Meade, MD 20755–7901.

The request should include the individual's full name.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''DISA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DISA Instruction 210–225–2; 32 CFR part 316; or may be obtained from the Defense Information Systems Agency, Continuity of Operations(COOP), OPS/GO51, 6910 Cooper Ave, Fort Meade, MD 20755–7901.''

* * * * *

[FR Doc. 2013–18686 Filed 8–1–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2013–0013]

Proposed Collection; Comment Request

AGENCY: Department of Defense/Department of the Army/U.S. Army Training and Doctrine Command (TRADOC), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 1, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal:* http://www.regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Headquarters, U.S. Army Training and Doctrine Command, Learning Integration, Institute for NCO Professional Development (ATCG–NCI), ATTN: Jeffery J. Colimon, 950 Jefferson Avenue, Fort Eustis, Virginia 23604–5702.

Title; Associated Form; and OMB Number: Sponsorship Program Counseling and Information Sheet; DA Form 5434; OMB Control Number 0702–TBD.

Needs And Uses: The information collection requirement is necessary to obtain and retain sponsorship program entitlements, and provide information to gaining battalion or activity of new members.

Affected Public: Individuals or Households; Soldiers and Department of the Army Civilians and their Family Members.

Annual Burden Hours: 28,889.

Number of Respondents: 173,338.

Responses Per Respondent: 1.

Average Burden Per Response: 10 minutes.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are DA Civilian employees and Soldiers. Departing Soldiers or DA Civilian employees complete the DA Form 5434 during initial reassignment interview or are interviewed by a DA Civilian employee following selection notification and acceptance of a position. The automation of the collection action into the Army Career Tracker (ACT) will help commanders with their basic responsibility to assist Soldiers, civilian employees, and families successfully relocate in and out of their commands. The form will be hosted into the ACT system to facilitate the execution of the Total Army Sponsorship Program (TASP).

Dated: July 26, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–18664 Filed 8–1–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT of DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of the Final Feasibility Study/Environmental Impact Statement for the Chatfield Reservoir Storage Reallocation, Littleton, CO

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, the U.S. Army Corps of Engineers has prepared a Final Feasibility Study/Environmental Impact Statement (FR/EIS) for the Chatfield Reservoir Storage Reallocation, Littleton, CO.

DATES: Submit comments on or before September 3, 2013.

FOR FURTHER INFORMATION CONTACT: For further information and/or questions about the Final Chatfield Reservoir Storage Reallocation FR/EIS, please contact Ms. Gwyn Jarrett, Project Manager, by telephone: (402) 995–2717, by mail: 1616 Capitol Avenue, Omaha, NE 68102–4901, or by email: *chatfield study@usace.army.milmailto:Gwyn.M. Jarrett@usace.army.mil*. For inquiries from the media, please contact the USACE Omaha District Public Affairs Officer (PAO), Ms. Eileen Williamson by telephone (402) 995–2487, by mail: 1616 Capitol Avenue, Omaha, NE 68102–4901, or by email: *Eileen.L.Williamson@usace.army.mil*.

SUPPLEMENTARY INFORMATION:

1. Background

Population growth within the Denver, Colorado, metropolitan area continues to create a demand on water providers. Colorado's population is projected to be between 8.6 and 10.3 million in 2050. The Statewide Water Supply Initiative (SWSI), commissioned by the State Legislature, estimates that by 2050, Colorado will need between 600,000 and 1 million acre-feet/year of additional municipal and industrial water. There is also a strong need for additional water supplies for the agricultural community in the South Platte Basin as thousands of acres of previously irrigated land has not been farmed in recent years due to widespread irrigation well curtailments. The purpose and need of the Chatfield Reservoir Storage Reallocation study is to increase availability of water, sustainable over the 50-year period of analysis, in the greater Denver area so that a larger proportion of existing and future (increasing) water needs can be met.

By authority provided under Section 808 of the Water Resources Development Act (WRDA) of 1986 (Pub. L. 99–622), as amended by Section 3042 of the Water Resources Development Act of 2007 (Pub. L. 110–114), the Secretary of the Army, upon request of and in coordination with, the Colorado Department of Natural Resources (CDNR), and upon the Chief of Engineers' finding of feasibility and economic justification, may reassign a portion of the storage space in the Chatfield Lake project to joint flood control-conservation purposes, including storage for municipal and industrial water supply, agriculture, environmental restoration, and recreation and fishery habitat protection and enhancement. The reallocation was conditioned upon the appropriate non-Federal interests agreeing to repay the cost allocated to such storage in accordance with the provisions of the Water Supply Act of 1958, the Federal Water Project Recreation Act, and such other Federal laws as the Secretary determines appropriate. The payments would go to the United States Treasury. The recreation modifications and environmental mitigation work are additionally authorized by Section 103(c)(2) WRDA 1986, requiring non-Federal payment of 100 percent of the costs of municipal and industrial water supply projects, and this work will be cost shared pursuant to that section.

It is the purpose of this study to identify alternatives, compare those alternatives, and select the best alternative for meeting the needs based on solid planning principles. The FR/EIS allows the public, cooperating agencies, and Corps decisionmakers to compare the impacts and costs among a range of alternatives.

2. Document Availability

The Final Chatfield Reservoir Storage Reallocation FR/EIS is available online at: *http://cdm16021.contentdm.oclc.org/cdm/ref/collection/p16021coll7/id/10*. Hard copies are available at the following community libraries and Corps of Engineers Chatfield Project Office: Highlands Ranch Library, 9292 Ridgeline Blvd., Highlands Ranch, CO 80129, (303) 647–6642; Colorado Water Conservation Board, 1313 Sherman Street, Room 721, Denver, CO 80203, (303) 866–3441; Columbine Library, 7706 West Bowles Avenue, Littleton, CO 80123, (303) 235–5275; Lincoln Park Library, 919 7th Street, Suite 100, Greeley, CO 80631, (970) 506–8460; Aurora Public Library, 14949 E. Alameda Parkway, Aurora, CO 80012, (303) 739–6600; US Army Corps of Engineers, Tri-Lakes Project Office, 9307 S. Wadsworth Blvd., Littleton, CO 80128.

For more information about the Chatfield Reservoir Storage Reallocation FR/EIS, please visit *http://www.nwo.usace.army.mil/Missions/CivilWorks/Planning/PlanningProjects/ChatfieldReallocationStudy.aspx*.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2013–18548 Filed 8–1–13; 8:45 am]

BILLING CODE 3710–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Hold North Dakota Task Force Meeting as Established by the Missouri River Protection and Improvement Act of 2000 (Title VII)

AGENCY: Department of the Army, U.S Army Corps of Engineers, DoD.

ACTION: Notice of meeting.

SUMMARY: The duties of the Task Force are to prepare and approve a plan for the use of the funds made available under Title VII to reduce siltation of the Missouri River in the State of North Dakota, develop and implement a long-term strategy to improve conservation, protect recreation from sedimentation, improve water quality, improve erosion control, and protect historic and cultural sites along the Missouri River in North Dakota from erosion, and to identify and develop new projects.

DATES: North Dakota Missouri River Task Force established by the Missouri River Protection and Improvement Act of 2000 will hold a meeting on August 20, 2013 from 1:00 to 3:30 p.m.

ADDRESSES: The meeting will be held at the Wingate Hotel located at 1421 Skyline Blvd. in Bismarck, ND.

FOR FURTHER INFORMATION CONTACT: Gwyn M. Jarrett at (402) 995–2717.

SUPPLEMENTARY INFORMATION: The objectives of the Task Force are to prepare and approve a plan for the use of the funds made available under Title VII, develop and recommend to the Secretary of the Army ways to implement critical restoration projects meeting the goals of the plan, and determine if these projects primarily benefit the Federal Government. Written requests may be sent to Gwyn M. Jarrett, U.S. Army Corps of Engineers, 1616

Capitol Avenue, Omaha, NE 68102–4901.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2013–18544 Filed 8–1–13; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Safe Environment Engineering

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Safe Environment Engineering a revocable, nonassignable, exclusive license to practice Safe Environment Engineering's proprietary sensor systems for the field of use of public safety for protection from events involving chemical, biological or radiological (CBR) airborne plumes that could endanger the safety of the general public from significant danger, injury/harm, or damage; the field of use of industrial safety and monitoring to ensure plant and factory worker protection from hazards involving CBR airborne plumes that could cause injury to personnel; the field of use of environmental monitoring for the assessment of environmental impacts of CBR airborne plumes on the local environment in the United States, the Government-owned inventions described in U.S. Patent No. 7,542,884: System and Method for Zero Latency, High Fidelity Emergency Assessment of Airborne Chemical, Biological and Radiological Threats by Optimizing Sensor Placement, Navy Case No. 097,281.//U.S. Patent Application No. 13/629,842: Method for Depicting Plume Arrival Times, Navy Case No. 101,728 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than August 19, 2013.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue SW, Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Rita Manak, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue SW, Washington, DC 20375–5320, telephone 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, email: rita.manak@nrl.navy.mil or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: July 24, 2013.

C. K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–18649 Filed 8–1–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

The following patents are available for licensing: U.S. Patent No. 8,467,056: VARIABLE ANGLE, FIBER OPTIC COUPLED, LIGHT SCATTERING APPARATUS, Issued on June 18, 2013// U.S. Patent Number 8,477,308: POLARIZED, SPECULAR REFLECTOMETER APPARATUS, Issued on July 2, 2013.

ADDRESSES: Requests for copies of the inventions cited should be directed to Naval Air Warfare Center Weapons Division, Code 4L4000D, 1900 N. Knox Road Stop 6312, China Lake, CA 93555–6106 and must include the patent number.

FOR FURTHER INFORMATION CONTACT: Michael D. Seltzer, Ph.D., Head, Technology Transfer Office, Naval Air Warfare Center Weapons Division, Code 4L4000D, 1900 N. Knox Road Stop 6312, China Lake, CA 93555–6106, telephone 760–939–1074, FAX 760–939–1210, Email: *michael.seltzer@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: July 23, 2013.

C. K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–18644 Filed 8–1–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Ocean Research Advisory Panel (ORAP) will hold a regularly scheduled meeting. The meeting will be open to the public.

DATES: The meeting will be held on Wednesday, August 21, 2013 from 9:00 a.m. to 5:00 p.m. and Thursday, August 22, 2013 from 9:00 a.m. to 12:00 p.m. Members of the public should submit their comments in advance of the meeting to the meeting Point of Contact.

ADDRESSES: The meeting will be held at Marine Acoustics Inc, 4100 Fairfax Drive, Suite 730, Arlington, VA, 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Joan S. Cleveland, Office of Naval Research, 875 North Randolph Street, Suite 1425, Arlington, VA 22203–1995, telephone 703–696–4532.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The meeting will include discussions on ocean research, resource management, and other current issues in the ocean science and management communities.

Dated: July 23, 2013.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–18647 Filed 8–1–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Nominations for Membership on the Ocean Research Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of request for nominations.

SUMMARY: The Ocean Research Advisory Panel (ORAP) is soliciting nominations for eight new members.

DATES: Nominations should be submitted no later than 5:00 p.m. EST, September 6, 2013.

ADDRESSES: Nominations should be submitted via email to CDR Stephen D. Martin, U.S. Navy, at *stephen.d.martin@navy.mil.*

Contact Information: Office of Naval Research, 875 North Randolph Street

Suite 1425, ATTN: ONR Code 322B Room 1075, Arlington, VA 22203, telephone 703–696–4395.

FOR FURTHER INFORMATION CONTACT: Dr. Joan S. Cleveland, Office of Naval Research, 875 North Randolph Street Suite 1425, Arlington, VA 22203–1995, telephone 703–696–4532; or CDR Stephen D. Martin, telephone 703–696–4395.

SUPPLEMENTARY INFORMATION: ORAP is a statutorily mandated federal advisory committee that provides senior advice to the National Ocean Research Leadership Council (NORLC), the governing body of the National Oceanographic Partnership Program (NOPP). Under the National Ocean Policy, the National Ocean Council (NOC) Deputy-level Committee has assumed the responsibilities of the NORLC. ORAP provides independent advice and guidance to the NOC. NOC routinely provides guidance and direction on the areas for which it seeks advice and recommendations from ORAP. ORAP also advises on selection of projects and allocation of funds for NOPP.

Panel Member Duties and Responsibilities: Members of the panel represent the National Academy of Sciences, the National Academy of Engineering, the Institute of Medicine, ocean industries, state governments, academia and others, including individuals who are eminent in the fields of marine science, marine policy, or related fields, including ocean resource management. Members are appointed annually and may serve a term of four years, and are not normally compensated except for travel expenses and per diem while away from their homes in performance of services for the panel.

The panel meets for at least one two-day public meeting per year, but possibly meets three times per year, on dates agreeable by the panel members; attendance at meetings is expected. Intercessional activities not involving formal decisions or recommendations may be carried out electronically, and the panel may establish sub-panels composed of less than full membership to carry out panel duties.

Nominations: Any interested person or organization may nominate qualified individuals (including one's self) for membership on the panel. Nominated individuals should have extended expertise and experience in the field of ocean science and/or ocean resource management. Nominations should be identified by name, occupation, position, address, telephone number, email address, and a brief paragraph describing their qualifications in the context of the ORAP Charter, that can be found on-line at (*http://www.nopp.org/committees/orap/*), and ability to represent a stakeholder group. Nominations should also include a résumé or curriculum vitae.

Process and Deadline for Submitting Nominations: Submit nominations via email to CDR Stephen Martin (*stephen.d.martin@navy.mil*) no later than 5:00pm EST, September 6, 2013. ORAP nomination committees under the direction of the National Ocean Council will evaluate the nominees identified by respondents to this **Federal Register** Notice and down-select to a short-list of available candidates (150% of the available open positions for consideration). These selected candidates will be required to fill-out the ''Confidential Financial Disclosure Report'' OGE form 450. This confidential form will allow Government officials to determine whether there is a statutory conflict between a person's public responsibilities and private interests and activities, or the appearance of a lack of impartiality, as defined by federal regulation. The form and additional guidance may be viewed at: (*http://www.oge.gov/Financial-Disclosure/Confidential-Financial-Disclosure-450/Confidential-Financial-Disclosure/*).

In accordance with section 7903 of title 10, United States Code, the short-list of candidates will then be submitted for approval by the Secretaries of the Navy and Defense who are the appointing officials for their consideration. At this time, eight openings are envisioned on the Panel and the final set of nominees will seek to balance a range of geographic and sector representation and experience. Applicants must be US citizens. Successful nominees must provide detailed information required to evaluate potential conflicts of interest. Typically the time required to achieve the final appointments to the Panel is 10–12 months. Members of the Panel serve as Special Government Employees who volunteer their time but whose travel costs for Panel business is provided by the Government. The ORAP is a Federal Advisory Committee and operates under the principles of open and transparent development of advice to the government.

The selection of new panel members will be based on the nominee's qualifications to provide senior advice to the NOC; the availability of the potential panel member to fully participate in the panel meetings; absence of any conflict of interest or appearance of lack of impartiality, and lack of bias; the candidates' areas of expertise and professional qualifications; and achieving an overall balance of different perspectives, geographic representation, and expertise on the panel.

It is the policy of the Office of Naval Research to provide equal employment opportunity to all persons regardless of race, color, national origin, sex (gender), sexual orientation, gender identity and/or expression, age, medical history, genetic information, marital status, political affiliation, veteran status, physical or mental disability, or any other non- merit factor. All are encouraged to apply.

Dated: July 23, 2013.

C. K. Chiappetta, Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–18648 Filed 8–1–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–132–000.

Applicants: Saja Energy LLC.

Description: Application for Authorization under Section 203 of the Federal Power Act of Saja Energy LLC.

Filed Date: 7/24/13.

Accession Number: 20130724–5109.

Comments Due: 5 p.m. ET 8/14/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1436–005; ER13–1793–002; ER10–3300–005 ER10–3099–006; ER12–1260–004; ER10–2329–002.

Applicants: Eagle Point Power Generation LLC, Hazle Spindle, LLC, La Paloma Generating Company, LLC, RC Cape May Holdings, LLC, Stephentown Spindle, LLC, Vineland Energy LLC.

Description: Notice of Change in Status of the Rockland Sellers.

Filed Date: 7/24/13.

Accession Number: 20130724–5115.

Comments Due: 5 p.m. ET 8/14/13.

Docket Numbers: ER13–692–005.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 07–24–2013 Errata OASIS Compliance Filing to be effective 4/15/2013.

Filed Date: 7/24/13.

Accession Number: 20130724–5056.

Comments Due: 5 p.m. ET 8/14/13.

Docket Numbers: ER13–1318–001.

Applicants: Public Service Company of New Mexico.

Description: WestConnect Regional Transmission Service Tariff to be effective 7/1/2013.

Filed Date: 7/24/13.

Accession Number: 20130724–5104.

Comments Due: 5 p.m. ET 8/14/13.

Docket Numbers: ER13–1437–000.

Applicants: Southern California Edison Company.

Description: Refund Report—Coram SGIA and Distribution Service Agmt to be effective N/A.

Filed Date: 7/24/13.

Accession Number: 20130724–5055.

Comments Due: 5 p.m. ET 8/14/13.

Docket Numbers: ER13–1816–000.

Applicants: Sustaining Power Solutions LLC.

Description: Supplement to June 27, 2013 Sustaining Power Solutions LLC's MBR Application.

Filed Date: 7/24/13.

Accession Number: 20130724–5129.

Comments Due: 5 p.m. ET 8/14/13.

Docket Numbers: ER13–2016–000.

Applicants: New York Independent System Operator, Inc.

Description: Request for Temporary, Limited Waiver of New York Independent System Operator, Inc.

Filed Date: 7/23/13.

Accession Number: 20130723–5146.

Comments Due: 5 p.m. ET 8/2/13.

Docket Numbers: ER13–2019–000.

Applicants: Wisconsin Electric Power Company.

Description: FERC Electric Rate Schedule No. 132, Blackstart Resource Service to be effective 1/1/2015.

Filed Date: 7/24/13.

Accession Number: 20130724–5071.

Comments Due: 5 p.m. ET 8/14/13.

Docket Numbers: ER13–2020–000.

Applicants: Solar Partners II, LLC.

Description: Application for Market-Based Rate Authority to be effective 8/12/2013.

Filed Date: 7/24/13.

Accession Number: 20130724–5086.

Comments Due: 5 p.m. ET 8/5/13.

Docket Numbers: ER13–2021–000.

Applicants: Public Service Company of New Mexico.

Description: Rate Schedule 169—WestConnect Participation Agreement to be effective 7/1/2013.

Filed Date: 7/24/13.

Accession Number: 20130724–5100.

Comments Due: 5 p.m. ET 8/14/13.

Docket Numbers: ER13–2022–000.

Applicants: Pacific Gas and Electric Company.

Description: Transmission Owner Rate Case 2014 (TO15) to be effective 10/1/2013.

Filed Date: 7/24/13.

Accession Number: 20130724–5102.

Comments Due: 5 p.m. ET 8/14/13.

Docket Numbers: ER13–2023–000.

Applicants: Catalina Solar, LLC.

Description: Catalina Solar LLC Cancellation of RS 2, Concurrence to Pacific Wind Lessee SFA to be effective 12/31/9998.

Filed Date: 7/24/13.

Accession Number: 20130724–5105.

Comments Due: 5 p.m. ET 8/14/13.

Docket Numbers: ER13–2024–000.

Applicants: Catalina Solar Lessee, LLC.

Description: Catalina Solar Lessee Concurrence to Shared Transmission Facilities Ag—Clone to be effective 12/31/9998.

Filed Date: 7/25/13.

Accession Number: 20130725–5000.

Comments Due: 5 p.m. ET 8/15/13.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC13–11–000.

Applicants: Fortis Generation East Limited Partnership.

Description: FUCO Self-Certification of Fortis Generation East Limited Partnership, by its general partner Fortis Generation East GP Inc.

Filed Date: 7/24/13.

Accession Number: 20130724–5064.

Comments Due: 5 p.m. ET 8/14/13.

Docket Numbers: FC13–12–000.

Applicants: FortisTCI Limited, Turks and Caicos Utilities Limited.

Description: FUCO Self-Certification of FortisTCI Limited and Turks and Caicos Utilities Limited.

Filed Date: 7/24/13.

Accession Number: 20130724–5065.

Comments Due: 5 p.m. ET 8/14/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 25, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–18661 Filed 8–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1484–007

Applicants: Shell Energy North America (US), L.P.

Description: Supplement to December 28, 2012 Updated Market Power Analysis for the Southwest Power Pool Region of Shell Energy North America (US), L.P.

Filed Date: 7/23/13

Accession Number: 20130723–5144

Comments Due: 5 p.m. ET 8/2/13

Docket Numbers: ER10–1827–001; ER10–1827–002; ER10–1825–002; ER10–1825–001

Applicants: Cleco Power LLC, Cleco Evangeline LLC

Description: Responses to Requests for Information of Cleco Power LLC.

Filed Date: 5/28/13

Accession Number: 20130528–5084

Comments Due: 5 p.m. ET 8/14/13

Docket Numbers: ER13–2012–000

Applicants: Southern California Edison Company

Description: GIA and Distribution Service Agreement with ASE PV Power of Riverside LLC to be effective 7/25/2013.

Filed Date: 7/24/13

Accession Number: 20130724–5001

Comments Due: 5 p.m. ET 8/14/13

Docket Numbers: ER13–2013–000

Applicants: Pacific Gas and Electric Company

Description: CCSF IA—42nd Quarterly Filing of Facilities Agreements to be effective 6/30/2013.

Filed Date: 7/24/13

Accession Number: 20130724–5003

Comments Due: 5 p.m. ET 8/14/13

Docket Numbers: ER13–2014–000

Applicants: Pacific Gas and Electric Company

Description: KMPUD IA and TFA to be effective 8/1/2013.

Filed Date: 7/24/13

Accession Number: 20130724–5004

Comments Due: 5 p.m. ET 8/14/13

Docket Numbers: ER13–2015–000

Applicants: Pacific Gas and Electric Company

Description: Notice of Termination of KMPUD Engineering Agreement to be effective 8/1/2013.

Filed Date: 7/24/13

Accession Number: 20130724–5005

Comments Due: 5 p.m. ET 8/14/13

Docket Numbers: ER13–2017–000

Applicants: Duke Energy Florida, Inc.

Description: Cancellation of DEF Rate Schedule No. 193 to be effective 12/31/2012.

Filed Date: 7/24/13

Accession Number: 20130724–5038

Comments Due: 5 p.m. ET 8/14/13

Docket Numbers: ER13–2018–000

Applicants: Duke Energy Florida, Inc.

Description: Cancellation of DEF Rate Schedule No. 199 to be effective 12/31/2011.

Filed Date: 7/24/13

Accession Number: 20130724–5040

Comments Due: 5 p.m. ET 8/14/13

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM13–3–000

Applicants: Missouri River Energy Services

Description: Missouri River Energy Services submits Application to Terminate Mandatory PURPA Purchase Obligation on behalf of itself and twenty-four of its members.

Filed Date: 7/23/13

Accession Number: 20130723–5148

Comments Due: 5 p.m. ET 8/20/13

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: http://www.ferc.gov/docs-filing/efiling/filing-req.pdf. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 24, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–18658 Filed 8–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–1094–000.

Applicants: Vector Pipeline L.P.

Description: ACA Compliance Filing Effective 10–1–2013 to be effective 10/1/2013.

Filed Date: 7/25/13.

Accession Number: 20130725–5012.

Comments Due: 5 p.m. ET 8/6/13.

Docket Numbers: RP13–1095–000.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits tariff filing per 154.203: Annual Charge Adjustment 2013 to be effective 10/1/2013.

Filed Date: 7/25/13.

Accession Number: 20130725–5029.

Comments Due: 5 p.m. ET 8/6/13.

Docket Numbers: RP13–1096–000.

Applicants: ANR Storage Company.

Description: ANR Storage Company submits tariff filing per 154.203: ACA Filing 2013 to be effective 10/1/2013.

Filed Date: 7/25/13.

Accession Number: 20130725–5030.

Comments Due: 5 p.m. ET 8/6/13.

Docket Numbers: RP13–1097–000.

Applicants: Eastern Shore Natural Gas Company.

Description: Eastern Shore Natural Gas Company submits tariff filing per 154.204: Storage Tracker Filing—October 1,2012 to be effective 10/1/2012.

Filed Date: 7/25/13.

Accession Number: 20130725–5032.

Comments Due: 5 p.m. ET 8/6/13.

Docket Numbers: RP13–1098–000.

Applicants: Bison Pipeline LLC.

Description: Bison Pipeline LLC submits tariff filing per 154.203: ACA Filing 2013 to be effective 10/1/2013.

Filed Date: 7/25/13.

Accession Number: 20130725–5033.

Comments Due: 5 p.m. ET 8/6/13.

Docket Numbers: RP13–1099–000.

Applicants: Blue Lake Gas Storage Company.

Description: Blue Lake Gas Storage Company submits tariff filing per 154.203: ACA Filing 2013 to be effective 10/1/2013.

Filed Date: 7/25/13.

Accession Number: 20130725–5034.

Comments Due: 5 p.m. ET 8/6/13.

Docket Numbers: RP13–1100–000.

Applicants: Gas Transmission Northwest LLC.

Description: Gas Transmission Northwest LLC submits tariff filing per 154.203: ACA Filing 2013 to be effective 10/1/2013.

Filed Date: 7/25/13.

Accession Number: 20130725–5035.

Comments Due: 5 p.m. ET 8/6/13.

Docket Numbers: RP13–1101–000.

Applicants: Great Lakes Gas Transmission Limited Par.

Description: Great Lakes Gas Transmission Limited Partnership submits tariff filing per 154.203: ACA Filing 2013 to be effective 10/1/2013.

Filed Date: 7/25/13.

Accession Number: 20130725–5036.

Comments Due: 5 p.m. ET 8/6/13.

Docket Numbers: RP13–1102–000.

Applicants: North Baja Pipeline, LLC.

Description: North Baja Pipeline, LLC submits tariff filing per 154.203: ACA Filing 2013 to be effective 10/1/2013.

Filed Date: 7/25/13.

Accession Number: 20130725–5037.

Comments Due: 5 p.m. ET 8/6/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP10–1083–006.

Applicants: Eastern Shore Natural Gas Company.

Description: Order No. 776 Compliance Filing to be effective 10/1/2013.

Filed Date: 7/24/13.

Accession Number: 20130724–5090.

Comments Due: 5 p.m. ET 8/5/13.

Docket Numbers: RP12–813–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Motion to Place Accepted and Suspended Tariff Records into Effect to be effective 7/24/2013.

Filed Date: 7/24/13.

Accession Number: 20130724–5060.

Comments Due: 5 p.m. ET 8/5/13.

Docket Numbers: RP12–814–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Motion to Place Accepted and Suspended Tariff Records into Effect to be effective 7/24/2013.

Filed Date: 7/24/13.

Accession Number: 20130724–5059.

Comments Due: 5 p.m. ET 8/5/13.

Docket Numbers: RP12–820–000.

Applicants: Texas Gas Transmission, LLC.

Description: Motion to Place Accepted and Suspended Tariff Records into Effect to be effective 7/24/2013.

Filed Date: 7/24/13.
Accession Number: 20130724–5061.
Comments Due: 5 p.m. ET 8/5/13.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 25, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–18659 Filed 8–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–1103–000.
Applicants: Northern Border Pipeline Company.
Description: ACA Filing 2013 to be effective 10/1/2013.
Filed Date: 7/25/13.
Accession Number: 20130725–5059.
Comments Due: 5 p.m. ET 8/6/13.

Docket Numbers: RP13–1104–000.
Applicants: Portland Natural Gas Transmission System.
Description: ACA Filing 2013 to be effective 10/1/2013.
Filed Date: 7/25/13.
Accession Number: 20130725–5060.
Comments Due: 5 p.m. ET 8/6/13.

Docket Numbers: RP13–1105–000.
Applicants: Energy West Development, Inc.
Description: Order No. 587–V Compliance Filing to be effective 12/1/2012.
Filed Date: 7/25/13.
Accession Number: 20130725–5061.
Comments Due: 5 p.m. ET 8/6/13.

Docket Numbers: RP13–1106–000.
Applicants: TC Offshore LLC.
Description: ACA Filing 2013 to be effective 10/1/2013.
Filed Date: 7/25/13.
Accession Number: 20130725–5078.
Comments Due: 5 p.m. ET 8/6/13.

Docket Numbers: RP13–1107–000.
Applicants: Tuscarora Gas Transmission Company.
Description: ACA Filing 2013 to be effective 10/1/2013.
Filed Date: 7/25/13.
Accession Number: 20130725–5085.
Comments Due: 5 p.m. ET 8/6/13.

Docket Numbers: RP13–1108–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Negotiated Rate Agreement—WGL 6800 & 7599 to be effective 7/26/2013.
Filed Date: 7/25/13.
Accession Number: 20130725–5122.
Comments Due: 5 p.m. ET 8/6/13.

Docket Numbers: RP13–1109–000.
Applicants: Southern Natural Gas Company, L.L.C.
Description: ACA Surcharge Filing—2013 to be effective 10/1/2013.
Filed Date: 7/26/13.
Accession Number: 20130726–5016.
Comments Due: 5 p.m. ET 8/7/13.

Docket Numbers: RP13–1110–000.
Applicants: Southern LNG Company, L.L.C.
Description: ACA Surcharge—2013 to be effective 10/1/2013.
Filed Date: 7/26/13.
Accession Number: 20130726–5017.
Comments Due: 5 p.m. ET 8/7/13.

Docket Numbers: RP13–1111–000.
Applicants: Elba Express Company, L.L.C.
Description: ACA Surcharge—2013 to be effective 10/1/2013.
Filed Date: 7/26/13.
Accession Number: 20130726–5018.
Comments Due: 5 p.m. ET 8/7/13.

Docket Numbers: RP13–1112–000.
Applicants: American Midstream (AlaTenn), LLC.
Description: AlaTenn Order No. 776 Compliance Filing to be effective 10/1/2013.
Filed Date: 7/26/13.
Accession Number: 20130726–5026.
Comments Due: 5 p.m. ET 8/7/13.

Docket Numbers: RP13–1113–000.
Applicants: American Midstream (Midla), LLC.
Description: Midla Order No. 776 Compliance Filing to be effective 10/1/2013.
Filed Date: 7/26/13.
Accession Number: 20130726–5027.
Comments Due: 5 p.m. ET 8/7/13.

Docket Numbers: RP13–1114–000
Applicants: High Point Gas Transmission, LLC.
Description: High Point Order No. 776 Compliance Filing to be effective 10/1/2013.
Filed Date: 7/26/13.
Accession Number: 20130726–5030.
Comments Due: 5 p.m. ET 8/7/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–1097–001.
Applicants: Eastern Shore Natural Gas Company.
Description: Storage Tracker Filin—November 1, 2012 to be effective 11/1/2012.
Filed Date: 7/26/13.
Accession Number: 20130726–5024.
Comments Due: 5 p.m. ET 8/7/13.

Docket Numbers: RP13–1097–002.
Applicants: Eastern Shore Natural Gas Company.
Description: Storage Tracker Filin—March 1, 2013 to be effective 3/1/2013.
Filed Date: 7/26/13.
Accession Number: 20130726–5028.
Comments Due: 5 p.m. ET 8/7/13.

Docket Numbers: RP13–366–001.
Applicants: Eastern Shore Natural Gas Company.
Description: Storage Tracker Filing—April 1, 2013 to be effective 7/26/2013.
Filed Date: 7/26/13.
Accession Number: 20130726–5079.
Comments Due: 5 p.m. ET 8/7/13.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 29, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–18663 Filed 8–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2984–012.
Applicants: Merrill Lynch Commodities, Inc.
Description: Notice of Non-Material Change in Status of Merrill Lynch Commodities, Inc.
Filed Date: 7/25/13.
Accession Number: 20130725–5153.
Comments Due: 5 p.m. ET 8/15/13.

Docket Numbers: ER10–3184–001; ER10–2805–001.
Applicants: FortisUS Energy Corporation, Central Hudson Gas & Electric Corp.
Description: Notice of Change in Status of FortisUS Energy Corporation, *et. al.*
Filed Date: 7/26/13.
Accession Number: 20130726–5127.
Comments Due: 5 p.m. ET 8/16/13.

Docket Numbers: ER10–3260–003.
Applicants: Granite Ridge Energy, LLC.
Description: Notice of Non-Material Change in Status of Granite Ridge Energy, LLC.
Filed Date: 7/25/13.
Accession Number: 20130725–5152.
Comments Due: 5 p.m. ET 8/15/13.

Docket Numbers: ER10–3286–004; ER10–3299–003; ER10–3310–005.
Applicants: Millennium Power Partners, L.P., New Athens Generating Company, LLC, New Harquahala Generating Company, LLC.
Description: Notice of Non-Material Change in Status of Millennium Power Partners, L.P.
Filed Date: 7/25/13.
Accession Number: 20130725–5151.
Comments Due: 5 p.m. ET 8/15/13.

Docket Numbers: ER13–692–005.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2013–07–26 Withdraw of OASIS Compliance Errata to be effective N/A.
Filed Date: 7/26/13.
Accession Number: 20130726–5014.
Comments Due: 5 p.m. ET 8/16/13.

Docket Numbers: ER13–1327–001.
Applicants: Public Service Company of Colorado.
Description: Public Service Company of Colorado submits tariff filing per 35: 2013–7–26_WestConnect_Concur_Participation Agrmt to be effective 7/28/2013.
Filed Date: 7/26/13.
Accession Number: 20130726–5099.
Comments Due: 5 p.m. ET 8/16/13.

Docket Numbers: ER13–1389–001.
Applicants: El Paso Electric Company.
Description: Concurrence of EPE with WestConnect Regional PTP Participation Agreement to be effective 7/1/2013.
Filed Date: 7/25/13.
Accession Number: 20130725–5103.
Comments Due: 5 p.m. ET 8/15/13.

Docket Numbers: ER13–1493–001.
Applicants: Public Service Company of New Mexico.
Description: OATT Section 2.2 Compliance to be effective 7/15/2013.
Filed Date: 7/26/13.
Accession Number: 20130726–5000.
Comments Due: 5 p.m. ET 8/16/13.

Docket Numbers: ER13–1585–001.
Applicants: Longfellow Wind, LLC.
Description: Supplement to May 30, 2013 Application for Market-Based Rate Authority to be effective 7/30/2013.
Filed Date: 7/25/13.
Accession Number: 20130725–5101.
Comments Due: 5 p.m. ET 8/15/13.

Docket Numbers: ER13–2025–000.
Applicants: Southwest Power Pool, Inc.
Description: 2548R2 KMEA and Westar Energy Meter Agent Agreement to be effective 7/1/2013.
Filed Date: 7/25/13.
Accession Number: 20130725–5081.
Comments Due: 5 p.m. ET 8/15/13.

Docket Numbers: ER13–2026–000.
Applicants: Louisville Gas and Electric Company.
Description: 2nd Amd and Restated Trans Coordination Agmt to be effective 9/17/2013.
Filed Date: 7/25/13.
Accession Number: 20130725–5088.
Comments Due: 5 p.m. ET 8/15/13.

Docket Numbers: ER13–2027–000.
Applicants: DWP Energy Holdings, LLC.
Description: DWP Energy Holdings, LLC Market Based Rate Filing to be effective 8/1/2013.
Filed Date: 7/25/13.
Accession Number: 20130725–5089.
Comments Due: 5 p.m. ET 8/15/13.

Docket Numbers: ER13–2028–000.
Applicants: Southwest Power Pool, Inc.
Description: 1374R12 Kansas Power Pool and Westar Meter Agent Agreement to be effective 7/1/2013.
Filed Date: 7/25/13.
Accession Number: 20130725–5098.
Comments Due: 5 p.m. ET 8/15/13.

Docket Numbers: ER13–2029–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position Y3–074; Original Service Agreement No. 3595 to be effective 7/8/2013.
Filed Date: 7/25/13.
Accession Number: 20130725–5128.
Comments Due: 5 p.m. ET 8/15/13.

Docket Numbers: ER13–2030–000.
Applicants: Northern States Power Company, a Minnesota Corporation.
Description: 2013–7–25_CHAK Bluff Ck Repl Ltr Agrmt_556_0.0.0 to be effective 9/23/2013.
Filed Date: 7/25/13.
Accession Number: 20130725–5131.
Comments Due: 5 p.m. ET 8/15/13.

Docket Numbers: ER13–2031–000.
Applicants: Southwest Power Pool, Inc.
Description: Withdrawal Revisions Bylaws/MA to be effective 9/23/2013.
Filed Date: 7/25/13.
Accession Number: 20130725–5140.
Comments Due: 5 p.m. ET 8/15/13.

Docket Numbers: ER13–2032–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3611; Queue No. Y2–051 to be effective 4/4/2013.
Filed Date: 7/25/13.
Accession Number: 20130725–5142.
Comments Due: 5 p.m. ET 8/15/13.

Docket Numbers: ER13–2033–000.
Applicants: Southwest Power Pool, Inc.
Description: Withdrawal Revisions Tariff to be effective 9/23/2013.
Filed Date: 7/25/13.
Accession Number: 20130725–5144.
Comments Due: 5 p.m. ET 8/15/13.

Docket Numbers: ER13–2034–000.
Applicants: Tucson Electric Power Company.
Description: WestConnect Rate Schedule, Part. Agmt, Pt-to-Pt Reg. Transmission Service to be effective 7/1/2013.
Filed Date: 7/26/13.
Accession Number: 20130726–5078.
Comments Due: 5 p.m. ET 8/16/13.

Docket Numbers: ER13–2035–000.
Applicants: Central Hudson Gas & Electric Corporation.
Description: Update to MBR Tariff to Reflect Category 1 Status in All Regions to be effective 9/22/2010.
Filed Date: 7/26/13.
Accession Number: 20130726–5101.
Comments Due: 5 p.m. ET 8/16/13.

Docket Numbers: ER13–2036–000.
Applicants: Interstate Power and Light Company.
Description: IPL Rate Schedule for Blackstart Resource Services to be effective 9/24/2013.
Filed Date: 7/26/13.
Accession Number: 20130726–5119.

Comments Due: 5 p.m. ET 8/16/13.

Docket Numbers: ER13–2037–000.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corporation submits Notice of Cancellation of Rate Schedule No. 249.

Filed Date: 7/26/13.

Accession Number: 20130726–5122.

Comments Due: 5 p.m. ET 8/16/13.

Docket Numbers: ER13–2038–000.

Applicants: Hess Corporation.

Description: Application for Tariff Waiver to submit exception for must-offer bid requirement, by Hess Corporation.

Filed Date: 7/26/13.

Accession Number: 20130726–5129.

Comments Due: 5 p.m. ET 8/2/13.

Docket Numbers: ER13–2039–000.

Applicants: Southwest Power Pool, Inc.

Description: Appendix 1 to Attachment M—Westar Loss Factor Update to be effective 9/1/2012.

Filed Date: 7/26/13.

Accession Number: 20130726–5133.

Comments Due: 5 p.m. ET 8/16/13.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA13–2–000,

Applicants: Blue Sky East, LLC, Canandaigua Power Partners, LLC, Canandaigua Power Partners II, LLC, Erie Wind, LLC, Evergreen Wind Power, LLC, Evergreen Wind Power III, LLC, First Wind Energy Marketing, LLC, Milford Wind Corridor Phase I, LLC, Milford Wind Corridor Phase II, LLC, Palouse Wind, LLC, Niagara Wind Power, LLC, Stetson Holdings, LLC, Stetson Wind II, LLC, Vermont Wind, LLC.

Description: Quarterly Land Acquisition Report of Blue Sky East, LLC, et al.

Filed Date: 7/25/13.

Accession Number: 20130725–5113.

Comments Due: 5 p.m. ET 8/15/13.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH13–21–000.

Applicants: Fortis Inc., FortisUS Holdings Nova Scotia Limited, FortisUS Inc.,CH Energy Group, Inc.

Description: Fortis, Inc. and Certain Subsidiaries submit FERC–65–B Waiver Notification.

Filed Date: 7/26/13.

Accession Number: 20130726–5121.

Comments Due: 5 p.m. ET 8/16/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 26, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–18662 Filed 8–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR13–28–000]

St. Paul Park Refining Co. LLC v. Enbridge Pipelines (North Dakota) LLC; Notice of Complaint

Take notice that on July 25, 2013, St. Paul Park Refining Co. LLC (Complainant) filed a formal complaint against Enbridge Pipelines (North Dakota) LLC (Respondent) pursuant to sections 1(5), 3(1), 8, 9, 13(1), 15(1), and 16(1) of the Interstate Commerce Act (ICA), 49 USC App. 1(5), 3(1), 8, 9, 13(1), 15(1), and 16(1), Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, and section 343.1(a) of the Commission's Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.1(a), alleging that the settlement agreement dealing with the Phase 6 Expansion Project of Enbridge Pipelines (North Dakota) LLC is no longer fair and reasonable and that the surcharge derived from the Settlement Agreement no longer has any regulatory basis.

St. Paul Park Refining Co. LLC certifies that copies of the complaint were served on the contacts for Enbridge Pipelines (North Dakota) LLC as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on August 14, 2013.

Dated: July 26, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–18588 Filed 8–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2558–029]

Green Mountain Power Corporation; Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the 21.814-megawatt (MW) Otter Creek Hydroelectric Project (Commission Project No. 2558–029) and has prepared a final environmental assessment (final EA). The project consists of three developments (Proctor, Beldens, and Huntington Falls) located

on Otter Creek in Addison and Rutland counties, Vermont.

In the final EA, Commission staff analyzes the potential environmental effects of relicensing the project and concludes that issuing a new license for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the final EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, contact Commission Online Support at *CommissionOnlineSupport@ferc.gov;* toll-free at 1–866–208–3676; or for TTY, (202) 502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact Commission Online Support.

For further information, contact Aaron Liberty at (202) 502–6862 or by email at *aaron.liberty@ferc.gov*.

Dated: July 26, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–18589 Filed 8–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

Ivanpah Master Holdings, LLC	Docket No. EG13–20–000
RE Rosamond One LLC	Docket No. EG13–23–000
RE Rosamond Two LLC	Docket No. EG13–24–000
Petra Nova Power I LLC	Docket No. EG13–25–000
Bay Wa r.e. Mozart, LLC	Docket No. EG13–26–000
Long Beach Generation LLC	Docket No. EG13–27–000
CCI Roseton LLC	Docket No. EG13–28–000
Imperial Valley Solar 1, LLC	Docket No. EG13–29–000
Gainesville Renewable Energy Center, LLC	Docket No. EG13–30–000

Take notice that during the month of June 2013, the status of the above-captioned entities as Exempt Wholesale Generators Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: July 26, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–18590 Filed 8–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–2027–000]

DWP Energy Holdings, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of DWP Energy Holdings, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is August 15, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 26, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–18591 Filed 8–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–2020–000]

Solar Partners II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 25, 2013.

This is a supplemental notice in the above-referenced proceeding, of Solar Partners II, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and *Procedure* (18 CFR 385.211 and

385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is August 5, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–18660 Filed 8–1–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9010–4]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 07/22/2013 Through 07/26/2013 Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20130226, Final EIS, USN, FL, Naval Air Station Key West Airfield Operations Review Period Ends: 09/03/2013, Contact: Greg Timoney 904–542–6866.

EIS No. 20130227, Draft EIS, NASA, CA, Proposed Demolition and Environmental Cleanup Activities at Santa Susana Field Laboratory, Comment Period Ends: 09/16/2013, Contact: Allen Elliott 256–544–0662.

EIS No. 20130228, Final EIS, USACE, CO, Chatfield Reservoir Storage Reallocation, Review Period Ends: 09/03/2013, Contact: Gwyn M. Jarrett 402–995–2717.

EIS No. 20130229, Final EIS, FAA, AK, Runway Safety Area Improvements Kodiak Airport, Review Period Ends: 09/03/2013, Contact: Leslie Grey 907–271–5453.

EIS No. 20130230, Draft EIS, NPS, NJ, Gateway National Recreation Area General Management Plan, Comment Period Ends: 10/02/2013 Contact: Suzanne McCarthy 718–354–4663.

Amended Notices

EIS No. 20130134, Draft EIS, FERC, CA, Drum-Spaulding Hydroelectric Project and Yuba-Bear Hydroelectric Project for Hydropower License, Comment Period Ends: 08/22/2013, Contact: Alan Mitchnick 202–502–6074. Revision to FR Notice Published 05/24/2013; Extending Comment Period from 07/23/2013 to 08/22/2013.

Dated: July 30, 2013.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2013–18697 Filed 8–1–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2012–0028; FRL–9843–1]

RIN 2050–AE81

Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability (NODA) and request for comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA or the Agency) invites comment on additional information obtained in conjunction with the proposed rule: Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities that was published in the **Federal Register** on June 21, 2010. This information is categorized as: additional data to supplement the Regulatory Impact Analysis and risk assessment, information on large scale fill, and data on the surface impoundment structural integrity assessments. EPA is also seeking comment on two issues associated with the requirements for coal combustion residual management units. The Agency is not reopening any other aspect of the proposal or underlying support documents, and will consider comments on any issues other than those raised in the NODA to be late comments and not part of the rulemaking record.

DATES: Submit comments on or before *September 3, 2013.*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2012–0028, by one of the following methods:

(1) *www.regulations.gov:* Follow the online instructions for submitting comments.

(2) *Email:* Comments may be sent by electronic mail (email) to rcra-docket@epa.gov, Attention Docket ID No. EPA–HQ–RCRA–2012–0028. In contrast to EPA's electronic public docket, EPA's email system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through EPA's electronic public docket, EPA's email system automatically captures your email address. Email addresses that are automatically captured by EPA's email system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

(3) *Fax:* Comments may be faxed to 202–566–9744. Attention Docket ID No. EPA–HQ–RCRA–2012–0028.

(4) *Mail:* Send two copies of your comments to Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities: Notice of Data Availability and Request for Comment, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington,

DC 20460. Attention Docket ID No. EPA–HQ–RCRA–2012–0028.

(5) *Hand Delivery:* Deliver two copies of your comments to the Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities: Notice of Data Availability and Request for Comment Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–RCRA–2012–0028. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2012–0028. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this notice.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities: Notice of Data Availability and Request for Comment Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–0270. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Steve Souders, Office of Resource Conservation and Recovery (5304P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0002, telephone (703) 308–8431, email address *souders.steve@epa.gov.* For more information on this rulemaking, please visit: *www.epa.gov/epawaste/nonhaz/industrial/special/fossil/ccr-rule/index.htm.*

SUPPLEMENTARY INFORMATION:

I. How should I submit CBI to the agency?

Do not submit information that you consider to be CBI electronically through *www.regulations.gov* or by email. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Resource Conservation and Recovery (5305P), U.S. EPA, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–RCRA–2012–0028. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed, except in accordance with the procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please contact: LaShan Haynes, Office of Resource Conservation and Recovery (5305P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0002, telephone (703) 605–0516, email address *haynes.lashan@epa.gov.*

II. What is the purpose of this NODA?

With this NODA, EPA is reopening the comment period on the proposed rule: Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities (75 FR 35127, June 21, 2010), herein referred to as the ''proposed rule'' for two limited purposes. The first is to obtain public comment on additional information that may be relevant to the development of a final Coal Combustion Residuals (CCR) rule under the Resource Conservation and Recovery Act (RCRA), herein referred to as the ''final rule.'' [1] This includes new information and data we have received that could be used in potential updates and enhancements to the Regulatory Impact Analysis (RIA) or risk assessment for the final rule.[2] EPA is still in the process of evaluating this information and we cannot definitively state we have determined that it is appropriate to rely on this information in developing the final rule. In addition, it should not be assumed that the specific information identified in this NODA is the full sum of the information that will be considered or that will influence the Agency's decisions in this rulemaking. However, EPA is reopening the comment period only for the limited purpose of allowing the public to comment on the validity and propriety

[1] EPA issued a NODA on October 12, 2011 (76 FR 63252) that announced and invited comment on other additional information that may be relevant to the development of a final rule that was obtained by EPA after the close of the public comment period on the proposed rule.

[2] The cited risk assessment, ''Draft: Human and Ecological Risk Assessment of Coal Combustion Wastes,'' April 2010 (EPA–HQ–RCRA–2009–0640–0002), and RIA, ''Regulatory Impact Analysis for EPA's Proposed RCRA Regulation Of Coal Combustion Residues (CCR) Generated by the Electric Utility Industry, ''April 2010 (EPA–HQ–RCRA–2009–0640–0003) are available in the docket for the 2010 proposed rule.

of using these data and potential analyses in developing the final rule; this action will provide the public with a full and complete opportunity to comment on the information that EPA has identified to date as having the potential to weigh significantly in our decisions. If EPA determines that it is appropriate to rely on any of the information provided in today's notice to support decisions and/or provisions in the final rulemaking, EPA will take the necessary steps to ensure the data is of sufficient quality before relying on it in deliberations on the final rule.[3] EPA will use its *Information Quality Guidelines,* as appropriate, to evaluate any information used to support a final regulatory decision.[4] In addition, EPA will also rely on the EPA Science Policy Council *Assessment Factors Guidance* to evaluate the quality and relevance of the scientific and technical information.[5]

The second purpose of this NODA is to solicit additional comment on two aspects of the proposed rule. The proposed technical requirements generated a significant number of technical comments and have presented some very complex issues. Based on the issues raised in public comments, EPA has identified two areas that warrant additional public comment; EPA is seeking additional comments on (1) the feasibility of complying with the Agency's proposed time frames for closing surface impoundments in the subtitle D option; and (2) how the technical requirements (including the design and operating requirements for new CCR landfills) relate to CCR overfill units that have been constructed on top of closed surface impoundments or landfills, which commenters have claimed is a common (and expanding) practice.

EPA is not reopening the comment period on any other issue associated with its original proposal. This is not an opportunity for the public to supplement their comments on the proposed rule, or to raise issues that could have been raised during the original comment period. The only issues on which the Agency is soliciting comment relate to the information in the docket supporting this NODA, EPA–HQ–RCRA–2012–0028, or the Web sites listed below, the potential revisions to the risk assessment and RIA based on this information, or the other two issues specifically described in this NODA. Comments submitted on any issues other than those specifically identified in this NODA will be considered ''late comments'' on the proposed rule. EPA will not respond to such comments, and they will not be considered part of the rulemaking record.

III. Where can the additional information identified in this NODA be found?

All the information EPA is noticing today in this NODA can be found in the docket, EPA–HQ–RCRA–2012–0028 or is available from Web sites at internet addresses provided in this notice. There are three data sets for which hardcopy versions of the material cited is not included in the docket and we are instead providing internet addresses. These are: (1) The Structural Integrity Surface Impoundment Assessments at: *http://www.epa.gov/wastes/nonhaz/industrial.special/fossil/surveys2/indexhtm;* (2) the Questionnaire for the Steam Electric Power Generating Effluent Guidelines at: *http://water.epa.gov/scitech/wastetech/guide/steam-electric/questionnaire.cfm;* and (3) the National Hydrography Dataset Plus (NHDPlus) at: *http://www.horizon-systems.com/nhdplus/.*

IV. What data to supplement the RIA and risk assessment are being noticed?

On June 7, 2013, EPA published a proposed rule revising technology-based effluent limitation guidelines and standards for the steam electric power generating point source category (ELG rule) (78 FR 34432). A principle source of information used in developing this proposal was the industry responses to a survey titled, The Questionnaire for the Steam Electric Power Generating Effluent Guidelines, distributed by EPA under the authority of section 308 of the Clean Water Act, 33 U.S.C. 1318.[6] EPA designed the industry survey to obtain technical information related to wastewater generation and treatment, and economic information such as costs of wastewater treatment technologies and financial characteristics of potentially affected companies. In June 2010, EPA mailed the survey to 733 plants. In general, plants were required to provide responses for the 2009 calendar year. (The reader is referred to the preamble discussion in the proposed ELG rule for additional information on the questionnaire and the data collected (78 *FR* 34442–34445.)) The Agency is considering whether to rely on all of the responding data in developing a revised RIA, risk assessment or other analyses. A Microsoft Access version of the data, a PDF of the original questions and mailing list, and an EXCEL version of the data element dictionary are all available at: *http://water.epa.gov/scitech/wastetech/guide/steam-electric/questionnaire.cfm;* this is the same information on which EPA solicited public comment in the proposed ELG rule. EPA also notes that the Agency will work to harmonize the use of these data, to the extent possible, in the development of this final rule.

V. What additional data for the risk assessment are being noticed?

EPA is soliciting comment on whether to consider the following additional information sources in developing a revised risk assessment in support of the final rule. The risk assessment prepared in support of the proposed rule titled, ''Draft: Human and Ecological Risk Assessment of Coal Combustion Wastes,'' April 2010 (''2010 Risk Assessment'') is available in the docket to the proposed rule (EPA–HQ–RCRA–2009–0640–0002). Although EPA is singling out the information and data specifically listed below and in the docket for further public comment, it should not be assumed that this information/data is the full sum of the information/data that will be considered or that will influence the Agency's decisions in this rulemaking.

1. EPA is considering updating the surface water flow rates. The average annual flow rates provided in the National Hydrography Dataset Plus (NHDPlus) may be used to supplement or replace the Reach File Version 1.0 (RF1) low flow (7Q10) data previously used to model surface water flow rates. These data can be found at: *http://www.horizon-systems.com/nhdplus/.*

2. Data from a report by the U.S. Census Bureau for the U.S. Fish and Wildlife Service titled, ''2006 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation.'' This report characterizes the percentage of residents in urban and rural areas of each state who are fresh water fishers.

[3] The Agency's ''Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency ''contains EPA's policy and procedural guidance for ensuring and maximizing the quality of information that the Agency disseminates. They were developed in response to guidelines issued by the Office of Management and Budget (OMB) under Section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658). The EPA Information Quality Guidelines are available at: *http://www.epa.gov/QUALITY/informationguidelines/documents/EPA_InfoQualityGuidelines.pdf.*

[4] Specific evaluation criteria are outlined in the Agency's document titled, ''Data Quality Assessment: A Reviewer's Guide ''(EPA/240/B–06/002, February 2006) provided at *http://www.epa.gov/quality/qs-docs/g9r-final.pdf.*

[5] Available at: *http://www.epa.gov/stpc/pdfs/assess2.pdf.*

[6] U.S. EPA. *Environmental Protection Agency: 2010 Questionnaire for the Steam Electric Power Generating Effluent Guidelines.* OMB Control No. 2040–0281. Approved May 20, 2010.

EPA is considering applying the U.S. Fish and Wildlife Service statistics for urban and rural areas from each state to current census population counts to estimate the total number of residents near each coal plant who are anglers.[7] This document is available at: *http://wsfrprograms.fws.gov/Subpages/NationalSurvey/nat_survey2006_final.pdf,* as well as in the docket supporting this NODA.

3. The EPA is considering using a mathematical procedure to model the interception of groundwater plumes by surface water bodies that may exist between a waste management unit and a down-gradient drinking water well. EPA is requesting comment on the validity of this procedure. Theoretical details of the procedure are provided in the document titled, ''Plume Interception by a Stream and Contaminant Concentrations at Receptor Wells Located Downgradient from the Stream'' that can be found in the docket supporting this NODA.

4. On October 12, 2011, EPA issued a NODA (76 FR 26086) seeking comments, among other things, on the CCR leaching data (Leaching Environmental Assessment Framework, or LEAF data) developed by EPA's Office of Research and Development and Vanderbilt University). Based on the comments received and additional review, the EPA is considering updating the LEAF data; new pre-processing algorithms were developed to make the best use of the LEAF data by EPA's Composite Model with Transformation Products (EPACMTP). EPA is providing further documentation related to the changes in the document titled, ''Algorithms to Pre-Process Leaching Data to Generate Source Terms for Modeling Landfill Leachate Migration in Ground Water'' that can be found in the docket supporting this NODA.

5. EPA obtained additional fish bio-concentration factors (BCFs) and other chemical-specific data from literature for hazardous constituents. The chemical-specific data to be used as inputs for modeling are available in a file titled, ''Chemical Specific Data'' that can be found in the docket supporting this NODA. EPA is only requesting comment on whether the revised BCFs should be considered in the final risk assessment in support of the final rule.

6. EPA created a list linking the location of each coal plant with the closest receiving water body for evaluating surface water risks as well as human health risks. Each plant is identified by the corresponding Energy Information Administration (EIA) ID and each receiving water body is identified by the corresponding Common ID (COMID). These data are provided in the EXCEL spreadsheet titled, ''List of Coal Plant and Closest Receiving Water'' that can be found in the docket supporting this NODA. We are soliciting comment regarding corrections or amendments to these data.

[7] The U.S. Census Bureau has defined urban and rural. EPA notes that according to this definition, ''urban fringe generally consists of contiguous territory having a density of at least 1,000 persons per square mile.'' Thus, a population of 3,142 persons within a 1-mile radius means a population density of 1,000 per square mile.

VI. What information on large scale fill is being noticed?

In the proposed rule, the Agency proposed to define the placement of CCRs in sand and gravel pits, quarries, and other large scale fill operations as land disposal, rather than beneficial use. 75 FR 35163. The preamble to the proposal discussed situations where large quantities of CCRs had been used as encapsulated general fill and the Agency stated that it considered that practice to be waste management. The preamble further stated that, ''The amount of material placed can significantly impact whether placement of unencapsulated CCRs cause environmental risks. There are great differences between the amount of material disposed of in a landfill and in a beneficial use setting. For example, a stabilized fly ash base course for roadway construction may be on the order of 6 to 12 inches thick under the road where it is used—these features differ considerably from the landfill and sand and gravel pit situations where hundreds of thousands to millions of tons of CCRs are disposed of and for which damage cases are documented.'' Id at 35164. However, EPA did not propose a definition of the activities that would constitute large scale fill, nor propose a size criterion, but ''solicit[ed] comments on appropriate criteria to distinguish between legitimate beneficial uses and inappropriate operations.'' Id at 35163.

In response, many commenters stated that EPA should have developed a size criterion to define large scale fill operations. The State of North Carolina suggested 5,000 cubic yards as a size criterion, but did not provide a basis for this. Other commenters did not suggest a specific definition or offer specific size limitations. In developing the CCR final rule and in defining large scale fill operations, EPA is considering whether to adopt an approach that relies on developing criteria or whether to develop a definition, either through guidance or an interpretive rule in the preamble, or through regulatory text that identifies the types of activities or factors the Agency will consider .

In the proposed rule, the Agency recognized that the amount of waste alone did not result in situations that replicated landfills. For example: ''The amount of material placed can significantly impact whether placement of unencapsulated CCRs causes environmental risks. There are great differences between the amount of material disposed of in a landfill and in beneficial use settings. For example, a stabilized fly ash base course for roadway construction may be on the order of 6 to 12 inches thick under the road where it is used—these features differ considerably from the landfill and sand and gravel pit situations where hundreds of thousands to millions of tons of CCRs are disposed of and for which damage cases are documented.'' Id at 35164. Thus, EPA may exclude roadway construction from the definition of ''CCR Landfill'' or set a minimum depth reflective of CCR landfills and the damage cases associated with fill operations.

Whatever approach is chosen, EPA is aware of three different types of data sets that could provide information relevant to developing appropriate criteria or to otherwise defining what constitutes large scale fill. EPA is soliciting comment on the adequacy of these data, and whether EPA should consider them for the purpose of creating criteria or a definition. Specifically:

- The first data set involves the size of the structural fills that have resulted in damage cases.[8] Size information on

[8] The Agency provided definitions for proven damage cases and potential damage cases in the 2010 proposal (see 75 FR 35131.) As stated in the proposal, damage cases can be either a *potential damage case* or a *proven damage case.*

Potential damage case means those cases with documented MCL exceedances that were measured in ground water beneath or close to the waste source. In these cases, while the association with CCRs has been established, the documented exceedances had not been demonstrated at a sufficient distance from the waste management unit to indicate that waste constituents had migrated to the extent that they could cause human health concerns.

Proven damage case means those cases with (i) documented exceedances of primary maximum contaminant levels (MCLs) or other health-based standards measured in ground water at sufficient distance from the waste management unit to indicate that hazardous constituents have migrated to the extent that they could cause human health concerns, and/or (ii) where a scientific study provides documented evidence of another type of damage to human health or the environment (*e.g.,* ecological damage), and/or (iii) where there has been an administrative ruling or court decision with an explicit finding of specific damage to human health or the environment. In cases of co-

Continued

all seven sites was not in the docket to the proposed rule, but has been added to the docket for this NODA (See the document titled, ''Structural Fills That Have Resulted in Damage Cases'').

- The second possible source of information that could be used is the distribution of landfill sizes, derived either from EPA's Office of Water's questionnaire—which, as mentioned earlier, is part of the docket supporting this NODA—or from the landfill size distribution used in the proposed rule. The landfill size data set may provide relevant information that could be used to develop size criteria for distinguishing between large scale fill operations and sham disposal, as discussed in the proposed rule. See 75 *FR* 35155
- The third potential data set is the document titled, ''North Carolina Documented Cases of Structural Fills Using Coal Ash as of January 2010''.This data set does not discuss damage cases but presents a size distribution for large scale fills that have been constructed in North Carolina.

These data have been placed in the docket supporting this NODA.

VII. What data on surface impoundment structural integrity assessments are being noticed?

On October 13, 2010, EPA described and solicited comment (See 76 FR 63252) on information that had been obtained from EPA's effort to assess the structural integrity of surface impoundments. At that time, EPA had completed the assessments and the final reports for 53 units. Since that time, EPA has continued this assessment effort and has posted on its Web site (see: *http://www.epa.gov/wastes/nonhaz/industrial.special/fossil/surveys2/indexhtm*) draft and final reports for a total of 522 units and 209 facilities.

The Agency solicits comments on all this information, including the assessments that were noticed on October 13, 2010, as to the extent to which both the CCR surface impoundment survey responses and assessment materials on the structural integrity of these impoundments should be factored into EPA's final rule.

IX. Request for Additional Public Comment on Two Technical Issues Related to Surface Impoundment/ Landfill Closure and Requirements for Overfills.

EPA received comments in two general areas relating to its proposed rule for CCR management units: (1) The feasibility of complying with the Agency's proposed time frames for closing surface impoundments in the subtitle D option; and (2) how these requirements (as well as the construction and operation requirements) relate to the construction of new CCR overfill units on top of closed surface impoundments or landfills. These specific requirements present some of the most complex and difficult technical issues and are re-opening the comment period for these two issues only. EPA notes however that comments submitted on any other aspect of the proposed technical requirements for CCR management units other than those specifically discussed below will be considered late comments that are not part of the rulemaking record, and the Agency will not respond to them.

A. Closure Time Frames

Under the subtitle D option, EPA proposed to establish time frames for closing waste disposal units. EPA proposed that closure activities must commence no later than 30 days following the known final receipt of CCRs. The proposed rule also provided that the 30-day deadline to commence closure activities could be extended to one year after the most recent receipt of CCRs if the CCR waste disposal unit had remaining capacity and there was a reasonable likelihood that the CCR waste disposal unit will receive additional CCRs. In addition, EPA proposed that an owner and operator complete closure activities within 180 days following the start of closure activities. Thus, the maximum amount of time a facility would have to initiate and complete closure of a disposal unit was seven months.

EPA received numerous comments from both states and individual electric utility facilities raising concerns that these time frames would essentially be ''impossible to meet'' for surface impoundments located in certain geographic and climatic conditions, as well as for the larger units. With respect to the time frames to complete closure, commenters raised concerns that dewatering of very large surface impoundments (*e.g.,* 100 acres or more) can take several years under certain climatic and weather conditions. Concerns were also raised that the time frames for both initiating and completing closure failed to account for the time needed to obtain any state permits or regulatory approvals that might be needed to conduct certain closure activities, and that these time frames were incompatible in light of normal operating practices. EPA's original proposal was modeled on the closure requirements applicable to municipal solid waste landfills and the interim status requirements for hazardous waste surface impoundments. As discussed in more detail below, the commenters have convinced EPA that it did not adequately account for the complexities inherent in electric generating facility operations, and the different characteristics of CCR surface impoundments in its original proposal. Consequently, EPA is evaluating several different options to address these concerns.

1. Time Frame for Initiating Closure

To address concerns about ''inactive'' or abandoned units, EPA proposed to require that facilities initiate closure within 30 days of either (1) the ''known final receipt'' of waste or (2) no later than one year after the most recent receipt of waste (*i.e.,* if the unit has not received waste for a year, the owner or operator must initiate closure). EPA is aware of several examples of routine and legitimate circumstances in which disposal units would not receive CCRs for longer than one year, even though the facility intends to continue to use the unit. Although EPA is singling out the information specifically listed below and in the docket for further public comment, it should not be assumed that this information is the full sum of the information received in comments that will be considered or that will influence the Agency's decisions in this rulemaking. Specifically:

- The surface impoundment structural integrity assessment report titled ''Assessment of Dam Safety Coal Combustion Surface Impoundments (Task 3) Final Report, Allegheny Energy, R. Paul Smith Station, Williamsport, Maryland'' provides an example of a power plant that alternates the use of surface impoundments in order to make the most of existing capacity on-site (*i.e.,* CCRs are removed and re-used/ disposed elsewhere). This facility alternates between two surface impoundments, only one of which is operational at a time. Once one impoundment has reached capacity, the facility dewaters the unit, and begins to send CCRs to the second impoundment. Once the unit is dewatered, the CCRs are excavated and disposed in an adjacent landfill. The time to fill these units has varied over the years as demand has fluctuated, but a typical time to fill a unit with CCRs is two years, perhaps longer, during which the other unit is ''idle,'' in that it does not

management of CCRs with other industrial waste types, CCRs must be clearly implicated in the reported damage.

''receive CCRs,'' but it remains operational.

• The surface impoundment structural integrity assessment report titled ''Coal Combustion Waste Impoundment Task 3—Dam Assessment Report, John E. Amos Plant (Site 26), Bottom Ash Dam, American Electric Power, St. Albans, West Virginia'' provides another example of a facility that alternates between two surface impoundments, only one of which is operational at a time. According to this report, the active and inactive status alters between the two impoundments every one or two years.

• The information request response from Xcel Energy titled ''Response to Request for Information Relating to Surface Impoundments Under 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9604(e)'' contains another example of a facility that alternates use of two surface impoundments, only one of these impoundments is typically active and used at any one time. Xcel Energy's Valmont Station in Boulder, Colorado practice is to clean out and switch the active pond every year. This report, and the two reports discussed above, can be found in the docket supporting this NODA.

Similarly, some electric generating units may be placed into long-term reserve status or temporarily idled in response to low demand. As a result, associated surface impoundments may not be used for extended periods, but need to be available when the electric generating units are restarted. In addition, facilities that use other fuels than coal may not use the associated coal ash disposal units for extended periods.

EPA agrees that there can be legitimate operational reasons for facilities to maintain waste disposal units even though there may be extended periods where CCRs are not placed in the unit. Consequently, EPA is soliciting comment on possible approaches to address these issues, including all aspects of the alternatives discussed below.

One approach under consideration could be to establish a rebuttable presumption that if the unit has not received waste within a particular time frame, the disposal unit would be considered inactive and unit closure must begin within a specified time. For example, the rule could establish a presumption that facilities must initiate closure within 18 months to two years from the last receipt of waste, unless the facility could document certain findings. These findings could include, but are not limited to, any of the following situations: (1) A written demonstration by the owner or operator documenting that a CCR waste disposal unit is dedicated to a temporarily idled electric generating unit and that there is a reasonable likelihood that CCRs will be disposed in the waste disposal unit after the electric generating unit resumes operation; (2) a written demonstration by the owner or operator documenting that a CCR waste disposal unit is dedicated to an electric generating unit designed to burn coal and another fuel(s) (*e.g.,* natural gas) and the reason that the waste disposal unit has not received CCRs within a particular time frame is that a non-coal fuel is being burned by the electric generating unit and showing that there is a reasonable likelihood that CCRs will be disposed in the waste disposal unit after the electric generating unit resumes burning coal; or (3) a written demonstration by the owner or operator documenting that normal plant operations include periods during which the CCR waste disposal unit does not receive CCRs and that there is a reasonable likelihood that CCR waste disposal operations will resume in the future. The facility would need to substantiate those findings, which would include the reason why the owner or operator believes ''that there is a reasonable likelihood that CCRs will be disposed in the waste disposal unit'' (which would also need to be certified by an independent registered professional engineer and/or the waste disposal unit owner or operator), and would be required to notify the state regulatory authority that those findings have been placed in the operating record and publicly posted to the internet.

The approach discussed above does not include a time limit on how long a CCR waste disposal unit could remain idle from the perspective of the unit receiving CCRs. That is, an owner or operator could maintain a waste disposal unit for many years with the expectation of one day resuming CCR disposal operations in the unit. EPA does have concerns about extending the deadline to initiate closure activities using such an approach because, due to the self-implementing nature of the regulations, it is possible that the owner or operator could unilaterally decide to extend closure activities longer than necessary or that would be protective.

Another approach that EPA is considering is to put a limit on how long an owner or operator can maintain a waste disposal unit without placing CCRs in the unit. For example, the rule could establish the rebuttable presumption approach discussed above, but also include a limit on how much time can pass without CCRs being placed in the waste disposal unit before the CCR waste disposal unit must begin closure (*e.g.,* five years). EPA solicits comment on the feasibility and propriety of this approach. Commenters who believe the flexibility provided by the rebuttable presumption approach is appropriate are encouraged to include examples documenting the need for such flexibility.

2. Time Frames to Complete Closure

Information that the Agency has received or independently collected since the close of the comment period confirms the commenters' claims that the time frames originally proposed to complete closure of surface impoundments will be practicably infeasible for the largest impoundments.[9] EPA acknowledges that it will need to establish different deadlines, at least for these larger units. However, any ultimate time frame that EPA provides that would be practicable for the largest units will be far too long to justify the time frames for closure of smaller impoundments. EPA is examining available closure-related information for CCR surface impoundments to determine whether there are consistent time frames or other factors that EPA could adopt as part of the regulations. Although EPA is singling out the information specifically listed below and in the docket for further public comment, it should not be assumed that this information is the full sum of the information received in comments that will be considered or that will influence the Agency's decisions in this rulemaking. Specifically:

• The surface impoundment structural integrity assessment report titled ''Coal Combustion Waste Impoundment Dam Assessment Report, Martins Creek Steam Electric Station, PPL Generation, Bangor, Pennsylvania'' contains closure-related information for the facility's Ash Basin No. 4. This 37-acre surface impoundment no longer receives CCRs and is being formally closed. The closure plan indicates that the dewatering and cap installation process will take approximately three years to complete.

• The proposed plan to close the two surface impoundments at Santee Cooper's Grainger Generating Station as provided in a letter (with attachments) from Santee Cooper to the South

[9] The information available to the Agency indicates that this issue is unique to surface impoundments. EPA is therefore not reopening for public comment the closure time frames for CCR landfills.

Carolina Department of Health and Environmental Control dated March 18, 2013. Under the proposed option, it is estimated that closure of the impoundments (one unit has a surface area of 42 acres and the second unit has a surface area of 39 acres) could be accomplished during a three-year period.

• A paper presented at the 2013 World of Coal Ash Conference titled ''Challenges of Closing Large Fly Ash Ponds,'' which discusses the engineering, regulatory and constructability challenges of closing a 300 acre surface impoundment over a projected four-year period. This report, and the two reports discussed above, can be found in the docket supporting this NODA.

EPA is also considering a variety of approaches for revising its overall regulatory structure. One approach could be to establish categories of time frames that distinguish between impoundments based on a variety of factors. At a minimum, this could include the size of the impoundment, as well as the final volume of material (both CCR and liquid) contained in the unit at the time of closure. For example, some commenters proposed a tiered approach for landfills and surface impoundments that grouped units into four categories: (1) Units smaller than 20 acres, would be subject to a one year deadline to complete closure; (2) units between 20 and 50 acres would be subject to a two year deadline to complete closure; (3) units between 50 and 75 acres would be subject to a three year deadline to complete closure; and (4) units greater than 75 acres would be subject to a ''site specific'' deadline to complete closure.[10]

While the commenters' tiered approach has appeal, the precise basis for the commenters' distinctions and the time frames is not clear; at a minimum, factors other than size, such as climate, geography, and waste disposal unit configuration would also appear to be relevant, and any time frames should account for those other factors. EPA solicits comment on ways to establish categories of time frames that take into consideration the various factors affecting the amount of time needed to properly close a surface impoundment, and encourages commenters who are interested in supporting such a tiered approach, to provide the rationale and data to support any suggested categories of time frames. In addition, the Agency believes that the concept of having a ''site-specific'' deadline may not be practicable, unless EPA were to establish a ''variance'' process as part of the rule. Under such a variance approach, the rule would establish a specific deadline (*e.g.,* closure must be completed no later than five years from the date closure activities are initiated), but would also allow facilities to petition EPA for a site-specific rule to establish an alternate deadline. This is because, as discussed at length in the proposal, under any subtitle D approach, EPA cannot rely on the existence of a state permitting authority to implement the RCRA subtitle D requirements (since EPA cannot require that states regulate, including issuing permits under RCRA 4004(a)). (75 FR 35193–94)

Another approach, similar to the approach EPA is considering with respect to the time frames for initiating closure, would be to establish time frames with a rebuttable presumption. For example, the rule could establish a presumption that facilities must complete closure within a specified time frame, such as, five years, unless the facility could document certain findings, such as the owner or operating providing a written demonstration that closure activities (*e.g.,* eliminating free liquids from the surface impoundment, stabilizing the remaining CCR wastes to support the final cover, constructing the final cover system) are not feasible to complete within the specified time frame. The facility would need to document those findings (which, consistent with the proposal, would also need to be certified by an independent registered professional engineer), and would be required to notify the state regulatory authority that the plan has been placed in the operating record and publicly posted to the Internet.

EPA is soliciting comments on whether any of these potential approaches, a combination of them, or other approaches would effectively address the practical concerns raised by the commenters, in a way that could assure that the closure of CCR waste disposal units will protect human health and the environment. EPA is primarily interested in comments that include data or other documentation (*e.g.,* specific closure plans).

B. New CCR Overfills Constructed Over Closed CCR Surface Impoundments or Landfills

One issue presented in public comments addressed how the Agency intends to regulate CCR landfills, also known as overfills, that are constructed over a closed CCR surface impoundment or landfill. An overfill is additional CCR disposal capacity located partially or entirely above a surface impoundment or landfill previously used for the disposal or storage of CCRs. Overfills can be defined as new, self-contained units that are distinct and separate from the unit upon which it is located.

EPA is aware of only one state, North Carolina, that has specific regulatory requirements for the design and construction of overfills. In 2007, North Carolina enacted design requirements for CCR landfills, *i.e.,* overfills constructed partially or entirely within areas that have been formerly used for the storage or disposal of CCRs. These management units are required to be constructed to ensure that the upper unit (*i.e.,* overfill) does not leach into the lower unit (*i.e.,* closed surface impoundment or landfill). By reducing infiltration, contaminants will not spread through to the lower unit and to the groundwater. North Carolina requires the installation of a double-liner leak detection system consisting of three components. The upper two components consist of two separate flexible membrane liners with leak detection between the two liners. The third component consists of a minimum of two feet of soil underneath the bottom of the liners, with a maximum permeability of 1 x10–7 centimeters per second. Additionally, North Carolina requires the development of a response plan that describes the circumstances under which corrective action measure is to be taken at the overfill in the event of the detection of leaks in the leak detection system.

In developing the proposed rule, EPA was not aware that CCRs were managed in this fashion (*i.e.,* in overfills), and so we did not either evaluate this specific management scenario or propose technical requirements specifically tailored to this type of management unit. Under the proposed rule, these types of units would need to comply with both the requirements applicable to the closure of surface impoundments or landfills, and with all of the technical requirements applicable to new landfills. For example, this would include the location and design requirements applicable to new landfills (*e.g.,* composite liners) as well as the operating requirements (*e.g.,* groundwater monitoring).

Since the close of the comment period, the Agency has learned that the practice of constructing overfills for the disposal of CCRs is conducted with some regularity. EPA has also obtained additional technical information, which is included in the docket supporting today's NODA on how these units are typically designed and operated, which

[10] This tiered approach is presented in docket items EPA–HQ–RCRA–2009–0640–6424 and EPA–HQ–RCRA–2009–0640–6832.

has raised questions as to whether these types of units would be effectively regulated under our proposed technical requirements.[11]

All of the information collected to date leads the Agency to believe that technical issues unique to these units may warrant some modifications to the technical standards. At a minimum, this could include changes to the technical requirements to clarify how they apply to overfills (*e.g.,* revisions to the definition of a ''new unit;'' clarifications as to how the liner requirements for the new landfill relate to the capping requirements for closed units). This could, however, also include substantive modifications to the technical standards and the development of a tailored set of requirements specific to this kind of disposal unit. Specifically, this could include substantive modifications to the location restrictions, design criteria, inspection requirements, groundwater monitoring, and closure.

To aid in the development of final requirements, EPA is soliciting data or information that directly addresses existing engineering guidelines or practices, as well as any regulatory requirements (other than North Carolina's) governing the siting, design, construction and long-term protectiveness of these units. In addition, the Agency is specifically requesting information or data that would allow EPA to address the following set of questions as they relate to CCR overfill units.

• Are the location restrictions included in the proposed rule adequate to ensure protection of human health and the environment or should they be adjusted? For example, should the Agency consider prohibiting the construction of such overfills in certain locations or situations, such as over surface impoundments and landfills that were not closed in accordance with the closure criteria in the June 2010 proposed rule?

• Should the Agency allow for a CCR overfill unit to be constructed over a partially closed surface impoundment or landfill? If so, would the proposed technical requirements for new units (*e.g.,* composite liners) be adequately protective? Are the ground water monitoring requirements that were proposed in the CCR proposal adequate or are there situations where they could they be inadequate?

• Are there situations where implementing the proposed ground water monitoring requirements would create the potential to damage the integrity of the closed surface impoundment or landfill? In situations where an overfill is constructed partially over a closed landfill or surface impoundment, the proposed rule would require the placement of the groundwater monitoring wells at the waste boundary (*i.e.,* at the boundary of the overfill). This placement, within the parameter of the closed unit, could possibly jeopardize the integrity of the closed unit (*e.g.,* cause damage to the liner). Would this problem be adequately resolved by allowing the groundwater monitoring wells installed to monitor the ''closed'' landfill or surface impoundment to operate in lieu of separate groundwater monitoring wells at the overfill waste boundary? Should ground water monitoring be required for a longer period, since contamination could be released from the closed surface impoundment or landfill, as well as the overfill unit?

• Should the Agency allow for a CCR overfill unit to not meet the liner and leachate collection requirements if the closed surface impoundment or landfill was equipped and continued to maintain a composite liner and leachate collection system as well as groundwater monitoring? Conversely, should the Agency require an overfill to have a double-liner leak detection system installed and forego groundwater monitoring until such time as a leak of the primary liner is detected?

• Should overfills be subject to the same inspection requirements that EPA originally proposed for surface impoundments (see proposed section 257.83, requiring weekly inspections by qualified personnel and annual inspections by an independent registered professional engineer). Would this adequately address any issues relating to the long-term structural integrity of these units and whether their inherent stability will be maintained through the active life of the unit as well as during post closure care. As an alternative, would it suffice to only require annual inspections of the overfill? Would it matter if the inspection requirement was paired with a revised certification in the locations restrictions section of the rule? How long should any inspection requirement continue under post-closure care?

Dated: July 26, 2013.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 2013–18706 Filed 8–1–13; 8:45 am]

BILLING CODE 6560–50–P

[11] Seymour, J. and Houlihan, M. F. (2011) Advances in Design of Landfills Over CCR Ponds and CCR Landfills, *Proceedings of the e 2011 World of Coal Ash (WOCA) Conference*—May 9–12, 2011,Denver, Colorado, *http://www.flyash.info/.*

Schmitt, N. and Cole, M. (2013) Use of Bottom Ash in the Reinforced Zone of a Mechanically Stabilized Earth Wall for the Vertical Expansion of a Sluiced CCR Pond at the Trimble County Generating Station. Proceedings of the 2013 World of Coal Ash (WOCA) Conference—April 22–25, 2013, Lexington, KY *http://www.flyash.info/.*

Houlihan, M.,Advances in Design of Landfills Over CCB Ponds and Landfills. 16 January 2013.

North Carolina statute allowing landfills on top of surface impoundments. *http://law.onecle.com/north-carolina/130a-public-health/130a-295.4.html*

Docket item EPA–HQ–RCRA–2009–0640–6877. Comment to the proposed rule from The Detroit Edison Company.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9841–2]

Adequacy Status of the Houston-Galveston-Brazoria, Texas Reasonable Further Progress and Attainment Demonstration Implementation Plan for the 1997 8-Hour Ozone Standard; Motor Vehicle Emission Budgets for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: EPA is notifying the public that it has found that the motor vehicle emissions budgets (MVEBs) in the Houston-Galveston-Brazoria, Texas (HGB) 1997 8-hour ozone standard Reasonable Further Progress (RFP) and Attainment Demonstration (AD) State Implementation Plan (SIP) revisions, submitted on May 6, 2013 by the Texas Commission on Environmental Quality (TCEQ), are adequate for transportation conformity purposes. As a result of EPA's finding, the HGB area must use these budgets for future conformity determinations.

DATES: These budgets are effective August 19, 2013.

FOR FURTHER INFORMATION CONTACT: The essential information in this notice will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.* You may also contact Mr. Jeffrey Riley, Air Planning Section (6PD–L), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–8542, Email address: *Riley.Jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refers to EPA. The word ''budget(s)'' refers to the mobile source emissions budget for volatile organic compounds (VOCs) and the mobile source emissions budget for nitrogen oxides (NO_X).

On May 6, 2013, TCEQ submitted as a SIP revision updated MVEBs for the HGB area. The MVEBs updated the March 2010 HGB 1997 8-hour ozone RFP and AD SIP revisions to replace the on-road mobile source emissions inventories for NO_X and VOCs based on EPA's MOBILE model with those based on EPA's MOVES model. This submittal established MVEBs for the HGB area for the years 2008, 2011, 2014, 2017 and 2018. The MVEB is the amount of emissions allowed in the state implementation plan for on-road motor vehicles; it establishes an emissions ceiling for the regional transportation network. The MVEBs are provided in Tables 1 and 2:

TABLE 1—HOUSTON-GALVESTON-BRAZORIA 1997 8-HOUR OZONE REASONABLE FURTHER PROGRESS NO_X AND VOC MVEBS

Pollutant	2008	2011	2014	2017	2018
NO_X	261.95	234.92	171.63	130.00	120.99
VOC	102.50	93.56	71.56	59.76	57.02

TABLE 2—HOUSTON-GALVESTON-BRAZORIA 1997 8-HOUR OZONE ATTAINMENT DEMONSTRATION NO_X AND VOC MVEBS

[Summer season tons per day]

Pollutant	2018
NO_X	103.34
VOC	50.13

On May 14, 2013, EPA posted the availability of the HGB area MVEBs on EPA's Web site for the purpose of soliciting public comments, as part of the adequacy process. The comment period closed on June 13, 2013, and we received no comments.

Today's notice is simply an announcement of a finding that EPA has already made. EPA Region 6 sent a letter to TCEQ on July 17, 2013, finding that the MVEBs in the HGB 1997 8-hour ozone RFP and AD SIPs, submitted on May 6, 2013 are adequate and must be used for transportation conformity determinations in the HGB area. This finding has also been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule, 40 Code of Federal Regulations (CFR) part 93, requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which EPA determines whether a SIP's MVEB is adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). We have also described the process for determining the adequacy of submitted SIP budgets in our July 1, 2004, final rulemaking entitled, ''Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes'' (69 FR 40004). Please note that an adequacy review is separate from EPA's completeness review, and it should not be used to prejudge EPA's ultimate approval of the HGB 1997 8-hour ozone RFP and AD SIP revision submittals. Even if EPA finds the budgets adequate, the HGB RFP and AD SIP revision submittals could later be disapproved.

Within 24 months from the effective date of this notice, the HGB-area transportation partners, such as the Houston-Galveston Area Council, will need to demonstrate conformity to the new MVEBs if the demonstration has not already been made, pursuant to 40 CFR 93.104(e). See 73 FR 4419 (January 24, 2008).

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 19, 2013.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2013–18545 Filed 8–1–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9841–5]

Proposed Agreement Regarding Site Costs and Covenants Not To Sue for American Lead and Zinc Mill Site, Ouray County, Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(h)(1), notice is hereby given of the proposed administrative settlement agreement (Settlement Agreement) under section 122(h) of CERCLA, 42 U.S.C. 9622(h) between the EPA and The Blue Tee Corporation (hereinafter referred to as the ''the Settling Party''). The Settlement Agreement provides for Settling Party's payment of certain response costs incurred at the American Lead and Zinc Mill Superfund Site near Ouray, Colorado.

The Settling Party will pay within 30 days after the effective date of this Settlement Agreement ($1,630,764), plus an additional sum for interest on that amount calculated from April 1, 2012 through the date of payment.

In accordance with Section 122(i) of CERCLA, this notice is being published to inform the public of the proposed Settlement Agreement and of the opportunity to comment. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed Settlement Agreement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate.

DATES: Comments must be received by September 3, 2013.

ADDRESSES: Comments should be sent Michael Rudy, Senior Enforcement Specialist (Mail Code ENF–RC), Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6332 or via electric mail at *rudy.mike@epa.gov* and should reference the American Lead and Zinc Mill Site, the EPA Docket No. CERCLA–08–2013–0004. The Agency's response to any comments, the proposed agreement and additional background information relating to the agreement is available for public inspection at the

EPA Superfund Record Center, 1595 Wynkoop Street, Denver, Colorado 80202–1129, during normal business hours.

FOR FURTHER INFORMATION CONTACT: Richard Sisk, Senior Enforcement Attorney, Environmental Protection Agency, Region 8, Mail Code 8ENF–LEP, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6638 or via electric mail at *sisk.richard@epa.gov.*

Dated: July 23, 2013.

Andrew M. Gaydosh,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA, Region 8.

[FR Doc. 2013–18549 Filed 8–1–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Community Banking; Notice of Charter Renewal

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of renewal of the FDIC Advisory Committee on Community Banking.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (''FACA''), 5 U.S.C. App. 2, and after consultation with the General Services Administration, the Chairman of the Federal Deposit Insurance Corporation has determined that renewal of the FDIC Advisory Committee on Community Banking (''the Committee'') is in the public interest in connection with the performance of duties imposed upon the FDIC by law. The Committee has been a successful undertaking by the FDIC and has provided valuable feedback to the agency on a broad range of policy issues that have particular impact on small community banks throughout the United States and the local communities they serve, with a focus on rural areas. The Committee will continue to review various issues that may include, but not be limited to, the latest examination policies and procedures, credit and lending practices, deposit insurance assessments, insurance coverage issues, and regulatory compliance matters, as well as any obstacles to the continued growth and ability of community banks to extend financial services in their local markets in the current market environment. The structure and responsibilities of the Committee are unchanged from when it was originally established in July 2009. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

Dated: July 29, 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Committee Management Officer.

[FR Doc. 2013–18578 Filed 8–1–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL TRADE COMMISSION

[File No. 122 3130]

Essentia Natural Memory Foam Company, Inc.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 26, 2013.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/essentianmfoamconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Essentia, File No. 122 3130'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/essentianmfoamconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robin Moore (202–326–2167), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 25, 2013), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 26, 2013. Write ''Essentia, File No. 122 3130'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and

you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/essentianmfoamconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home*. you also may file a comment through that Web site.

If you file your comment on paper, write ''Essentia, File No. 122 3130'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 26, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Essentia Natural Memory Foam Company, Inc., a corporation (''respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondent's marketing and sale of memory foam mattresses. According to the FTC's complaint, respondent represented that its mattresses do not contain volatile organic compounds (''VOCs''), are chemical-free, have no VOC off-gassing, lack the odors commonly associated with memory foam, and are made with 100% natural materials. The complaint alleges that respondent did not possess and rely upon a reasonable basis substantiating these representations when it made them. Moreover, the complaint alleges that respondent claims that tests show that the memory foam used in respondent's mattresses is free of VOCs and Formaldehyde. The complaint alleges that tests do not support these claims. Thus, the complaint alleges that respondent engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act. Thus, the complaint alleges that respondent engaged in deceptive practices in violation of Section 5(a) of the FTC Act. The Commission does not typically challenge subjective claims, such as smell.[2] However, a consumer acting reasonably under the circumstances is likely to interpret representations that a memory foam mattress lacks the common smell associated with memory foam to mean that the mattress is free of VOCs.

The proposed consent order contains three provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I addresses the marketing of VOC-free mattresses. It prohibits respondent from making zero-VOC claims unless the VOC emission level is zero micrograms per meter cubed or the company possesses and relies upon competent and reliable scientific evidence that their mattresses contain no more than a trace level of VOCs based on the Green Guides' guidance on making free-of claims.[3] It also prohibits respondent from making chemical-free claims.

Part II addresses VOC claims, odor-free claims and comparative odor claims, environmental benefit or attribute claims, certain health claims made about mattresses, and natural claims. It prohibits such representations unless the representation is true, not misleading, and substantiated by competent and reliable scientific evidence.

Part III addresses claims that testing supports respondents' advertising claims for its mattresses. It prohibits any misrepresentations about the existence, contents, validity, results, conclusion, or interpretations of any test, study, or research.

Parts IV though VII require Essentia to: Keep copies of advertisements and materials relied upon in disseminating any representation covered by the order; provide copies of the order to certain personnel, agents, and representatives having supervisory responsibilities with respect to the subject matter of the order; notify the Commission of changes in its structure that might affect compliance obligations under the order; and file a compliance report with the Commission and respond to other requests from FTC staff. Part VIII provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify the proposed order's terms in any way.

By direction of the Commission.

Richard C. Donohue,

Acting Secretary.

[FR Doc. 2013–18612 Filed 8–1–13; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 122 3129]

Ecobaby Organics, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 26, 2013.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/ecobabyorganicsconsent* online or on

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[2] *See* FTC, FTC Policy Statement on Deception, *appended to Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174 (1984).

[3] *See* Guides for the Use of Environmental Marketing Claims, 77 FR 62, 122, 62,123 (Oct. 11, 2012).

paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Ecobaby Organics, File No. 122 3129'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/ecobabyorganicsconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robin Moore (202–326–2167), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 25, 2013), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 26, 2013. Write ''Ecobaby Organics, File No. 122 3129'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/ecobabyorganicsconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home.* you also may file a comment through that Web site.

If you file your comment on paper, write ''Ecobaby Organics, File No. 122 3129'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 26, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Ecobaby Organics, Inc., a corporation (''respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondent's marketing and sale of natural latex mattresses. According to the FTC's complaint, respondent makes three types of claims about these mattresses. First, respondent claims that its mattresses are certified by the National Association of Organic Mattress Industry (''NAOMI''), an independent third-party certifier with appropriate expertise in evaluating whether respondent's mattresses meet objective standards. However, the complaint alleges that NAOMI is an alter ego of respondent and not an independent third-party certifier and, indeed, awarded its seal to its own products without applying objective standards. Accordingly, the complaint alleges that such representations are deceptive practices in violation of Section 5(a) of the FTC Act.

Second, respondent represents that its mattresses are chemical-free; Formaldehyde-free; free of VOCs, such as Toluene and Benzene; and without toxic substances. The complaint alleges that respondent did not possess and rely upon a reasonable basis substantiating these representations when it made them. Thus, the complaint alleges that respondent engaged in deceptive practices in violation of Section 5(a) of the FTC Act.

Third, respondent claims that tests show that its mattresses are VOC-free, chemical-free, and Formaldehyde-free. The complaint alleges that tests do not support these claims. Thus, the

complaint alleges that respondent engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains four provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I addresses the marketing of VOC-free and chemical free mattresses. It prohibits respondent from making zero-VOC claims unless the VOC emission level is zero micrograms per meter cubed or the company possesses and relies upon competent and reliable scientific evidence that their mattresses contain no more than a trace level of VOCs based on the Green Guides' guidance on making free-of claims.[2] It also prohibits respondent from making chemical-free claims.

Part II addresses VOC claims, non-toxic claims, environmental benefit or attribute claims, and certain health claims made about mattresses. It prohibits such representations unless the representation is true, not misleading, and substantiated by competent and reliable scientific evidence.

Part III addresses representations about third-party certifications. It prohibits any misrepresentations about the degree to which an independent third-party certifier has evaluated respondents mattresses based on environmental or health attributes, or evaluated those attributes based on the application of objective standards.

Part IV addresses claims that testing supports respondents' advertising claims for its mattresses. It prohibits any misrepresentations about the existence, contents, validity, results, conclusion, or interpretations of any test, study, or research.

Parts V through VIII require Ecobaby to: keep copies of advertisements and materials relied upon in disseminating any representation covered by the order; provide copies of the order to certain personnel, agents, and representatives having supervisory responsibilities with respect to the subject matter of the order; notify the Commission of changes in its structure that might affect compliance obligations under the order; and file a compliance report with the Commission and respond to other requests from FTC staff. Part IX provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify the proposed order's terms in any way.

By direction of the Commission.

Richard C. Donohue,

Acting Secretary.

[FR Doc. 2013–18611 Filed 8–1–13; 8:45 am]

BILLING CODE 6750–01–P

[2] *See* Guides for the Use of Environmental Marketing Claims, 77 FR 62, 122, 62,123 (Oct. 11, 2012).

FEDERAL TRADE COMMISSION

[File No. 122 3128]

Relief-Mart, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 26, 2013.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/reliefmartincconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Relief Mart, File No. 122 3128'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/reliefmartincconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robin Moore (202–326–2167), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 25, 2013), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 26, 2013. Write ''Relief Mart, File No. 122 3128'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR

4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/reliefmartincconsent* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home.* you also may file a comment through that Web site.

If you file your comment on paper, write ''Relief Mart, File No. 122 3128'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 26, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Relief-Mart, Inc., a corporation (''respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondent's marketing and sale of memory foam mattresses. According to the FTC's complaint, respondent represented that its mattresses do not contain volatile organic compounds (''VOCs''), have no VOC off-gassing, and lack the odors commonly associated with memory foam. The complaint alleges that respondent did not possess and rely upon a reasonable basis substantiating these representations when it made them. Thus, the complaint alleges that respondent engaged in deceptive practices in violation of Section 5(a) of the FTC Act. The Commission does not typically challenge subjective claims, such as smell.[2] However, a consumer acting reasonably under the circumstances is likely to interpret representations that a memory foam mattress lacks the common smell associated with memory foam to mean that the mattress is free of VOCs.

The proposed consent order contains two provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I addresses the marketing of VOC-free mattresses. It prohibits respondent from making zero-VOC claims unless the VOC emission level is zero micrograms per meter cubed or the company possesses and relies upon competent and reliable scientific evidence that their mattresses contain no more than a trace level of VOCs based on the Green Guides' guidance on making free-of claims.[3] Part II addresses VOC claims, odor-free claims and comparative odor claims, environmental benefit or attribute claims, and certain health claims made about mattresses. It prohibits such representations unless the representation is true, not misleading, and substantiated by competent and reliable scientific evidence.

Parts III though VI require Relief-Mart to: Keep copies of advertisements and materials relied upon in disseminating any representation covered by the order; provide copies of the order to certain personnel, agents, and representatives having supervisory responsibilities with respect to the subject matter of the order; notify the Commission of changes in its structure that might affect compliance obligations under the order; and file a compliance report with the Commission and respond to other requests from FTC staff. Part VII provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify the proposed order's terms in any way.

By direction of the Commission.

Richard C. Donohue,

Acting Secretary.

[FR Doc. 2013–18613 Filed 8–1–13; 8:45 am]

BILLING CODE 6750–01–P

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[2] *See* FTC, FTC Policy Statement on Deception, *appended to Cliffdale Assocs., Inc.,* 103 F.T.C. 110, 174 (1984).

[3] *See* Guides for the Use of Environmental Marketing Claims, 77 FR 62, 122, 62,123 (Oct. 11, 2012).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC and ATSDR Use of the SF–424 Research and Related Forms (Application Packages) in Grants.gov and the eRA Commons

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

Purpose

NIH's electronic Research Administration (eRA) periodically implements updated versions of the federal grant application forms in order to remain current with the most recent Office of Management and Budget approved form sets available through Grants.gov. CDC and other agencies serviced by eRA use the 'Competition ID' field of Grants.gov application packages for quick and easy identification of the forms being used for a particular Funding Opportunity Announcement or individual application package.

The purpose of this **Federal Register** Notice is to alert applicants that CDC is transitioning to the updated electronic application forms packages entitled ''SF–424 Research and Related (R&R) forms.'' The new packages will identify the Competition ID of ''FORMS–C'' and will include the form changes documented at *http://grants.nih.gov/grants/ElectronicReceipt/files/FORMS-C_Changes.pdf.*

For due dates on or after September 25, 2013, all applicants will be required to use FORMS–C packages, with the exceptions noted below. The requirement includes electronic applications submitted under the continuous submission policy,

administrative supplement requests, change of organization requests, and change of grantee/training institution requests submitted September 25, 2013 and beyond. Multi-project applications that are transitioning to electronic submission beginning with the September 25, 2013 due dates (see the NIH Guide Notice *NOT–OD–13–075*) will also use FORMS–C packages.

Exceptions

The programs noted below will move to FORMS–C application packages as follows:

- Individual Research Career Development Award Programs (Ks), Institutional Training and Career Development Programs (Ts and Ds) and Individual National Research Service Awards (Fs) applicants will be required to use FORMS–C packages for due dates on or after January 25, 2014.
- Small Business programs (SBIR/STTR) applicants will transition to FORMS–C packages later in 2014, so that anticipated form changes relating to the Small Business Authorization Act can be incorporated.

Instructions

- If presented with more than one forms package, applicants should download and use the most recent set of forms to complete their submission.
- Verify you have the correct application package by checking the Competition ID field for FORMS–C. The Competition ID field can be found when downloading the application package from Grants.gov, in the application header information of the downloaded package or in FOA summary information for multi-project applications.
- Learn more about choosing the correct forms packages at: *http://grants.nih.gov/grants/ElectronicReceipt/files/right_forms.pdf.*
- All applicants should carefully read their FOA and the appropriate ''C Series'' Application Guide for program-specific instructions before completing their application.

Inquiries

Please direct all inquiries to: Technical Information Management Section, Procurement and Grants Office, Centers for Disease Control and Prevention, Telephone: 770–488–2700, Email: *pgotim@cdc.gov.*

Dated: July 26, 2013.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–18608 Filed 8–1–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0536]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Medical Device User Fee Cover Sheet, Form FDA 3601

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Medical Device User Fee Cover Sheet, Form FDA 3601'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On February 8, 2013, the Agency submitted a proposed collection of information entitled ''Medical Device User Fee Cover Sheet, Form FDA 3601'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0511. The approval expires on April 30, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: July 29, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–18638 Filed 8–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0868]

Agency Information Collection Activities; Proposed Collection; Comment Request; Draft Guidance for Industry: Use of Serological Tests To Reduce the Risk of Transmission of Trypanosoma cruzi Infection in Whole Blood and Blood Components for Transfusion

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments concerning establishment notification of a consignee and consignee notification of a recipient's physician of record regarding a possible increased risk of *Trypanosoma cruzi (T. cruzi)* infection.

DATES: Submit either electronic or written comments on the collection of information by October 1, 2013.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7726, *Ila.mizrachi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests

or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry: Use of Serological Tests To Reduce the Risk of Transmission of *Trypanosoma cruzi* Infection in Whole Blood and Blood Components for Transfusion—(OMB Control Number 0910–0681)—Extension

The guidance implements the donor screening recommendations for the FDA-approved serological test systems for the detection of antibodies to *T. cruzi.* The use of the donor screening tests are to reduce the risk of transmission of *T. cruzi* infection by detecting antibodies to *T. cruzi* in plasma and serum samples from individual human donors, including donors of Whole Blood and Blood Components intended for transfusion. The guidance recommends that establishments that manufacture Whole Blood and Blood Components intended for transfusion should notify consignees of all previously collected in-date blood and blood components to quarantine and return the blood components to establishments or to destroy them within three calendar days after a donor tests repeatedly reactive by a licensed test for *T. cruzi* antibody. When establishments identify a donor who is repeatedly reactive by a licensed test for *T. cruzi* antibodies and for whom there is additional information indicating risk of *T. cruzi* infection, such as testing positive on a licensed supplemental test (when such test is available) or until such test is available, information that the donor or donor's mother resided in an area endemic for Chagas disease (Mexico, Central and South America) or as a result of other medical diagnostic testing of the donor indicating *T. cruzi* infection, we recommend that the establishment notify consignees of all previously distributed blood and blood components collected during the ''lookback'' period and, if blood and blood components were transfused, encourage consignees to notify the recipient's physician of record of a possible increased risk of *T. cruzi* infection.

Respondents to this information collection are establishments that manufacture Whole Blood and Blood Components intended for transfusion. We believe that the information collection provisions in the guidance for establishments to notify consignees and for consignees to notify the recipient's physician of record do not create a new burden for respondents and are part of usual and customary business practices. Since the end of January 2007, a number of blood centers representing a large proportion of U.S. blood collections have been testing donors using a licensed assay. We believe these establishments have already developed standard operating procedures for notifying consignees and the consignees to notify the recipient's physician of record.

The guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR 601.12 have been approved under OMB control number 0910–0338; the collections of information in 21 CFR 606.100, 606.121, 606.122, 606.160(b)(ix), 606.170(b), 610.40, and 630.6 have been approved under OMB control number 0910–0116; the collections of information in 21 CFR 606.171 have been approved under OMB control number 0910–0458.

Dated: July 29, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–18573 Filed 8–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0007]

Animal Drug User Fee Rates and Payment Procedures for Fiscal Year 2014

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates and payment procedures for fiscal year (FY) 2014 animal drug user fees. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Animal Drug User Fee Amendments of 2013, which was signed by the President on June 13, 2013 (ADUFA III), authorizes FDA to collect user fees for certain animal drug applications and supplements, for certain animal drug products, for certain establishments where such products are made, and for certain sponsors of such animal drug applications and/or investigational animal drug submissions. This notice establishes the fee rates for FY 2014.

FOR FURTHER INFORMATION CONTACT: Visit FDA's Web site at *http://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/default.htm* or contact Lisa Kable, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7529 Standish Pl., Rockville, MD 20855, 240–276–9718. For general questions, you may also email the Center for Veterinary Medicine (CVM) at: *cvmadufa@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 740 of the FD&C Act (21 U.S.C. 379j–12) establishes four different types of user fees: (1) Fees for certain types of animal drug applications and supplements; (2) annual fees for certain animal drug products; (3) annual fees for certain establishments where such products are made; and (4) annual fees for certain sponsors of animal drug applications and/or investigational animal drug submissions (21 U.S.C. 379j–12(a)). When certain conditions are met, FDA will waive or reduce fees (21 U.S.C. 379j–12(d)).

For FY 2014 through FY 2018, the FD&C Act establishes aggregate yearly base revenue amounts for each fiscal year (21 U.S.C. 379j–12(b)(1)). Base revenue amounts established for years after FY 2014 are subject to adjustment

for inflation and workload (21 U.S.C. 379j–12(c)). Fees for applications, establishments, products, and sponsors are to be established each year by FDA so that the percentages of the total revenue that is derived from each type of user fee will be as follows: Revenue from application fees will be 20 percent of total fee revenue; revenue from product fees will be 27 percent of total fee revenue; revenue from establishment fees shall be 26 percent of total fee revenue; and revenue from sponsor fees shall be 27 percent of total fee revenue (21 U.S.C. 379j–12(b)(2)).

For FY 2014, the animal drug user fee rates are: $396,600 for an animal drug application; $198,300 for a supplemental animal drug application for which safety or effectiveness data are required and for an animal drug application subject to the criteria set forth in section 512(d)(4) of the FD&C Act (21 U.S.C. 360b(d)(4)); $9,075 for an annual product fee; $105,800 for an annual establishment fee; and $101,150 for an annual sponsor fee. FDA will issue invoices for FY 2014 product, establishment, and sponsor fees by December 31, 2013, and payment will be due by January 31, 2014. The application fee rates are effective for applications submitted on or after October 1, 2013, and will remain in effect through September 30, 2014. Applications will not be accepted for review until FDA has received full payment of application fees and any other animal drug user fees owed under ADUFA.

II. Revenue Amount for FY 2014

A. Statutory Fee Revenue Amounts

ADUFA III (Title I of Pub. L. 113–14) specifies that the aggregate revenue amount for FY 2014 for all animal drug user fee categories is $23,600,000. (21 U.S.C. 379j–12(b)(1)(A).)

B. Inflation Adjustment to Fee Revenue Amount

The amount established in ADUFA III for FY 2014 includes an inflation adjustment; therefore, no further inflation adjustment is required for FY 2014. For FY 2015 and subsequent years an inflation adjustment will be made (21 U.S.C. 379j–12(c)(2)).

C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount

The amount established in ADUFA III for FY 2014 is not to be further adjusted for workload. For FY 2015 and subsequent years a workload adjustment will be calculated (21 U.S.C. 379j–12(c)(3)).

D. FY 2014 Fee Revenue Amounts

ADUFA III specifies a total revenue amount of $23,600,000 for FY 2014. Of this amount: 20 percent, or a total of $4,720,000, is to come from application fees; 27 percent, or a total of $6,372,000, is to come from product fees; 26 percent, or a total of $6,136,000, is to come from establishment fees; and 27 percent, or a total of $6,372,000, is to come from sponsor fees (21 U.S.C. 379j–12(b)).

III. Application Fee Calculations for FY 2014

The terms ''animal drug application'' and ''supplemental animal drug application'' are defined in section 739 of the FD&C Act (21 U.S.C. 379j–11(1) and (2)).

A. Application Fee Revenues and Numbers of Fee-Paying Applications

The application fee must be paid for any animal drug application or supplemental animal drug application that is subject to fees under ADUFA and that is submitted on or after September 1, 2003. The application fees are to be set so that they will generate $4,720,000 in fee revenue for FY 2014. This is the amount derived in section II.D of this document. The fee for a supplemental animal drug application for which safety or effectiveness data are required and for an animal drug application subject to criteria set forth in section 512(d)(4) of the FD&C Act is to be set at 50 percent of the animal drug application fee (21 U.S.C. 379j–12(a)(1)(A)(ii)).

To set animal drug application fees and supplemental animal drug application fees to realize $4,720,000 FDA must first make some assumptions about the number of fee-paying applications and supplements the Agency will receive in FY 2014.

The Agency knows the number of applications that have been submitted in previous years. That number fluctuates significantly from year to year. In estimating the fee revenue to be generated by animal drug application fees in FY 2014, FDA is assuming that the number of applications that will pay fees in FY 2014 will equal the average number of submissions over the 5 most recent completed years (FY 2008–FY 2012). This may not fully account for possible year to year fluctuations in numbers of fee-paying applications, but FDA believes that this is a reasonable approach after 10 years of experience with this program.

Over the 5 most recent completed years, the average number of animal drug applications that would have been subject to the full fee was 7.2. Over this same period, the average number of supplemental applications and applications subject to the criteria set forth in section 512(d)(4) of the FD&C Act that would have been subject to half of the full fee was 9.4.

B. Fee Rates for FY 2014

FDA must set the fee rates for FY 2014 so that the estimated 7.2 applications that pay the full fee and the estimated 9.4 supplemental applications and applications subject to the criteria set forth in section 512(d)(4) of the FD&C Act that pay half of the full fee will generate a total of $4,720,000. To generate this amount, the fee for an animal drug application, rounded to the nearest $100, will have to be $396,600, and the fee for a supplemental animal drug application for which safety or effectiveness data are required and for applications subject to the criteria set forth in section 512(d)(4) of the FD&C Act will have to be $198,300.

IV. Product Fee Calculations for FY 2014

A. Product Fee Revenues and Numbers of Fee-Paying Products

The animal drug product fee (also referred to as the product fee) must be paid annually by the person named as the applicant in a new animal drug application or supplemental new animal drug application for an animal drug product submitted for listing under section 510 of the FD&C Act (21 U.S.C. 360), and who had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003. (See 21 U.S.C. 379j–12(a)(2).) The term ''animal drug product'' means each specific strength or potency of a particular active ingredient or ingredients in final dosage form marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the national drug code, and for which an animal drug application or a supplemental animal drug application has been approved (21 U.S.C. 379j–11(3)). The product fees are to be set so that they will generate $6,372,000 in fee revenue for FY 2014. This is the amount derived in section II.D of this document.

To set animal drug product fees to realize $6,372,000, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2014. FDA developed data on all animal drug products that have been submitted for listing under section 510 of the FD&C Act and matched this to the list of all persons who had an

animal drug application or supplement pending after September 1, 2003. As of June 2013, FDA estimates that there are a total of 747 products submitted for listing by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA estimates that a total of 747 products will be subject to this fee in FY 2014.

In estimating the fee revenue to be generated by animal drug product fees in FY 2014, FDA is assuming that 6 percent of the products invoiced, or 45, will not pay fees in FY 2014 due to fee waivers and reductions. FDA has reduced the estimate of the percentage of products that will not pay fees from 10 percent to 6 percent this year, based on historical data over the past 5 years. Based on experience with other user fee programs and the first 10 years of ADUFA, FDA believes that this is a reasonable basis for estimating the number of fee-paying products in FY 2014.

Accordingly, the Agency estimates that a total of 702 (747 minus 45) products will be subject to product fees in FY 2014.

B. Product Fee Rates for FY 2014

FDA must set the fee rates for FY 2014 so that the estimated 702 products that pay fees will generate a total of $6,372,000. To generate this amount will require the fee for an animal drug product, rounded to the nearest $5, to be $9,075.

V. Establishment Fee Calculations for FY 2014

A. Establishment Fee Revenues and Numbers of Fee-Paying Establishments

The animal drug establishment fee (also referred to as the establishment fee) must be paid annually by the person who: (1) Owns or operates, directly or through an affiliate, an animal drug establishment; (2) is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the FD&C Act; (3) had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003; and (4) whose establishment engaged in the manufacture of the animal drug product during the fiscal year. (See 21 U.S.C. 379j–12(a)(3).) An establishment subject to animal drug establishment fees is assessed only one such fee per fiscal year. (See 21 U.S.C. 379j–12(a)(3).) The term ''animal drug establishment'' is defined in 21 U.S.C. 379j–11(4). The establishment fees are to be set so that they will generate $6,136,000 in fee revenue for FY 2014. This is the amount derived in section II.D of this document.

To set animal drug establishment fees to realize $6,136,000, FDA must make some assumptions about the number of establishments for which these fees will be paid in FY 2014. FDA developed data on all animal drug establishments and matched this to the list of all persons who had an animal drug application or supplement pending after September 1, 2003. As of June 2013, FDA estimates that there are a total of 66 establishments owned or operated by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA believes that 66 establishments will be subject to this fee in FY 2014.

In estimating the fee revenue to be generated by animal drug establishment fees in FY 2014, FDA is assuming that 12 percent of the establishments invoiced, or 8, will not pay fees in FY 2014 due to fee waivers and reductions. FDA has increased the estimate of the percentage of establishments that will not pay fees from 10 percent to 12 percent this year, based on historical data over the past 5 years. Based on experience with the first 10 years of ADUFA, FDA believes that this is a reasonable basis for estimating the number of fee-paying establishments in FY 2014.

Accordingly, the Agency estimates that a total of 58 establishments (66 minus 8) will be subject to establishment fees in FY 2014.

B. Establishment Fee Rates for FY 2014

FDA must set the fee rates for FY 2014 so that the estimated 58 establishments that pay fees will generate a total of $6,136,000. To generate this amount will require the fee for an animal drug establishment, rounded to the nearest $50, to be $105,800.

VI. Sponsor Fee Calculations for FY 2014

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The animal drug sponsor fee (also referred to as the sponsor fee) must be paid annually by each person who: (1) Is named as the applicant in an animal drug application, except for an approved application for which all subject products have been removed from listing under section 510 of the FD&C Act, or has submitted an investigational animal drug submission that has not been terminated or otherwise rendered inactive and (2) had an animal drug application, supplemental animal drug application, or investigational animal drug submission pending at FDA after September 1, 2003. (See 21 U.S.C. 379j–11(6) and 379j–12(a)(4).) An animal drug sponsor is subject to only one such fee each fiscal year. (See 21 U.S.C. 379j–12(a)(4).) The sponsor fees are to be set so that they will generate $6,372,000 in fee revenue for FY 2014. This is the amount derived in section II.D of this document.

To set animal drug sponsor fees to realize $6,372,000, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2014. Based on the number of firms that would have met this definition in each of the past 10 years, FDA estimates that a total of 181 sponsors will meet this definition in FY 2014.

Careful review indicates that about one third or 33 percent of all of these sponsors will qualify for minor use/minor species waiver or reduction (21 U.S.C. 379j–12(d)(1)(D)). Based on the Agency's experience to date with sponsor fees, FDA's current best estimate is that an additional 32 percent will qualify for other waivers or reductions, for a total of 65 percent of the sponsors invoiced, or 118, who will not pay fees in FY 2014 due to fee waivers and reductions. FDA has increased the estimate of the percentage of sponsors that will not pay fees from 60 percent to 65 percent this year, based on historical data over the past 5 years. FDA believes that this is a reasonable basis for estimating the number of fee-paying sponsors in FY 2014.

Accordingly, the Agency estimates that a total of 63 sponsors (181 minus 118) will be subject to and pay sponsor fees in FY 2014.

B. Sponsor Fee Rates for FY 2014

FDA must set the fee rates for FY 2014 so that the estimated 63 sponsors that pay fees will generate a total of $6,372,000. To generate this amount will require the fee for an animal drug sponsor, rounded to the nearest $50, to be $101,150.

VII. Fee Schedule for FY 2014

The fee rates for FY 2014 are summarized in table 1 of this document.

TABLE 1—FY 2014 FEE RATES

Animal drug user fee category	Fee rate for FY 2014
Animal Drug Application Fees:	
Animal Drug Application ...	$396,600

TABLE 1—FY 2014 FEE RATES—Continued

Animal drug user fee category	Fee rate for FY 2014
Supplemental Animal Drug Application for which Safety or Effectiveness Data are Required or Animal Drug Application Subject to the Criteria Set Forth in Section 512(d)(4) of the FD&C Act	198,300
Animal Drug Product Fee	9,075
Animal Drug Establishment Fee [1]	105,800
Animal Drug Sponsor Fee [2]	101,150

[1] An animal drug establishment is subject to only one such fee each fiscal year.

[2] An animal drug sponsor is subject to only one such fee each fiscal year.

VIII. Procedures for Paying the FY 2014 Fees

A. Application Fees and Payment Instructions

The appropriate application fee established in the new fee schedule must be paid for an animal drug application or supplement subject to fees under ADUFA that is submitted after September 30, 2013. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration, by wire transfer, or electronically using Pay.gov. (The Pay.gov payment option is available to you after you submit a cover sheet. Click the ''Pay Now'' button.) On your check, bank draft, or U.S. postal money order, please write your application's unique Payment Identification Number (PIN), beginning with the letters AD, from the upper right-hand corner of your completed Animal Drug User Fee Cover Sheet. Also write the FDA post office box number (P.O. Box 953877) on the enclosed check, bank draft, or money order. Your payment and a copy of the completed Animal Drug User Fee Cover Sheet can be mailed to: Food and Drug Administration, P.O. Box 953877, St. Louis, MO 63195–3877.

If payment is made by wire transfer, send payment to: U.S. Department of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, FDA Deposit Account Number: 75060099, U.S. Department of Treasury routing/transit number: 021030004, SWIFT Number: FRNYUS33. You are responsible for any administrative costs associated with the processing of a wire transfer. Contact your bank or financial institution about the fee and add it to your payment to ensure that your fee is fully paid.

If you prefer to send a check by a courier such as Federal Express or United Parcel Service, the courier may deliver the check and printed copy of the cover sheet to: U.S. Bank, Attn: Government Lockbox 953877, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This address is for courier delivery only. If you have any questions concerning courier delivery contact the U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery.)

The tax identification number of FDA is 53–0196965. (Note: In no case should the payment for the fee be submitted to FDA with the application.)

It is helpful if the fee arrives at the bank at least a day or two before the application arrives at FDA's CVM. FDA records the official application receipt date as the later of the following: The date the application was received by FDA's CVM, or the date U.S. Bank notifies FDA that your payment in the full amount has been received, or when the U.S. Treasury notifies FDA of receipt of an electronic or wire transfer payment. U.S. Bank and the U.S. Treasury are required to notify FDA within 1 working day, using the PIN described previously.

B. Application Cover Sheet Procedures

Step One—Create a user account and password. Log on to the ADUFA Web site at *http://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/default.htm* and, under Tools and Resources, click ''The Animal Drug User Fee Cover Sheet'' and then click ''Create ADUFA User Fee Cover Sheet.'' For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process.

Step Two—Create an Animal Drug User Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your user name and password, complete the steps required to create an Animal Drug User Fee Cover Sheet. One cover sheet is needed for each animal drug application or supplement. Once you are satisfied that the data on the cover sheet is accurate and you have finalized the cover sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy of your cover sheet showing your unique PIN.

Step Three—Send the payment for your application as described in section VIII.A of this document.

Step Four—Please submit your application and a copy of the completed Animal Drug User Fee Cover Sheet to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855.

C. Product, Establishment, and Sponsor Fees

By December 31, 2013, FDA will issue invoices and payment instructions for product, establishment, and sponsor fees for FY 2014 using this fee schedule. Payment will be due by January 31, 2014. FDA will issue invoices in November 2014 for any products, establishments, and sponsors subject to fees for FY 2014 that qualify for fees after the December 2013 billing.

Dated: July 29, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–18619 Filed 8–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0007]

Animal Generic Drug User Fee Rates and Payment Procedures for Fiscal Year 2014

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fee rates and payment procedures for fiscal year (FY) 2014 generic new animal drug user fees. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Animal Generic Drug User Fee Amendments of 2013, which was signed by the President on June 13, 2013 (AGDUFA II), authorizes FDA to collect user fees for certain abbreviated applications for generic new animal drugs, for certain generic new animal drug products, and for certain sponsors of such abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs. This notice establishes the fee rates for FY 2014.

FOR FURTHER INFORMATION CONTACT: Visit FDA's Web site at *http://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/default.htm*, or contact Lisa Kable, Center for Veterinary

Medicine (HFV–10), Food and Drug Administration, 7529 Standish Pl., Rockville, MD 20855, 240–276–9718. For general questions, you may also email the Center for Veterinary Medicine (CVM) at *cvmagdufa@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 741 of the FD&C Act (21 U.S.C. 379j–21) establishes three different types of user fees: (1) Fees for certain types of abbreviated applications for generic new animal drugs; (2) annual fees for certain generic new animal drug products; and (3) annual fees for certain sponsors of abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs (21 U.S.C. 379j–21(a)). When certain conditions are met, FDA will waive or reduce fees for generic new animal drugs intended solely to provide for a minor use or minor species indication (21 U.S.C. 379j–21(d)).

For FY 2014 through FY 2018, the FD&C Act establishes aggregate yearly base revenue amounts for each of these fee categories. Base revenue amounts established for fiscal years after FY 2014 may be adjusted for workload. Fees for applications, products, and sponsors are to be established each year by FDA so that the revenue for each fee category will approximate the level established in the statute, after the level has been adjusted for workload.

For FY 2014 the generic new animal drug user fee rates are: $177,900 for each abbreviated application for a generic new animal drug other than those subject to the criteria in section 512(d)(4) of the FD&C Act (21 U.S.C. 360b(d)(4)); $88,950 for each abbreviated application for a generic new animal drug subject to the criteria in section 512(d)(4); $8,035 for each generic new animal drug product; $72,800 for each generic new animal drug sponsor paying 100 percent of the sponsor fee; $54,600 for each generic new animal drug sponsor paying 75 percent of the sponsor fee; and $36,400 for each generic new animal drug sponsor paying 50 percent of the sponsor fee. FDA will issue invoices for FY 2014 product and sponsor fees by December 31, 2013. These fees will be due by January 31, 2014. The application fee rates are effective for all abbreviated applications for a generic new animal drug submitted on or after October 1, 2013, and will remain in effect through September 30, 2014. Applications will not be accepted for review until FDA has received full payment of related application fees and any other fees owed under the Animal Generic Drug User Fee program.

II. Revenue Amount for FY 2014

A. Statutory Fee Revenue Amounts

AGDUFA II, Title II of Public Law 113–14, specifies that the aggregate revenue amount for FY 2014 for abbreviated application fees is $1,832,000 and each of the other two generic new animal drug user fee categories, annual product fees and annual sponsor fees, is $2,748,000 each (see 21 U.S.C. 379j–21(b)).

B. Inflation Adjustment to Fee Revenue Amount

The amounts established in AGDUFA II for each year for FY 2014 through FY 2018 include an inflation adjustment; therefore, no further inflation adjustment is required.

C. Workload Adjustment Fee Revenue Amount

For each FY beginning after FY 2014, AGDUFA provides that statutory fee revenue amounts shall be further adjusted to reflect changes in review workload. However the statutory fee revenue amount for FY 2014 is not to be further adjusted for workload. (See 21 U.S.C. 379j–21(c)(2).)

III. Abbreviated Application Fee Calculations for FY 2014

The term ''abbreviated application for a generic new animal drug'' is defined in 21 U.S.C. 379j–21(k)(1).

A. Application Fee Revenues and Numbers of Fee-Paying Applications

The application fee must be paid for abbreviated applications for a generic new animal drug that is subject to fees under AGDUFA and that is submitted on or after July 1, 2008. The application fees are to be set so that they will generate $1,832,000 in fee revenue for FY 2014. This is the amount set out in the statute (21 U.S.C. 379j–21(b)(1)).

To set fees for abbreviated applications for generic new animal drugs to realize $1,832,000, FDA must first make some assumptions about the number of fee-paying abbreviated applications it will receive during FY 2014.

The Agency knows the number of applications that have been submitted in previous years. That number fluctuates significantly from year to year. FDA is making estimates and applying different assumptions for two types of submissions: Original submissions of abbreviated applications for generic new animal drugs and ''reactivated'' submissions of abbreviated applications for generic new animal drugs. Any original submissions of abbreviated applications for generic new animal drugs that were received by FDA before July 1, 2008, were not assessed fees (21 U.S.C. 379j–21(a)(1)(A)). Some of these non-fee-paying submissions were later resubmitted on or after July 1 because the initial submission was not approved by FDA (i.e., FDA marked the submission as incomplete and requested additional non-administrative information) or because the original submission was withdrawn by the sponsor. Abbreviated applications for generic new animal drugs resubmitted on or after July 1, 2008, are subject to user fees. In this notice, FDA refers to these resubmitted applications as ''reactivated'' applications.

Also, under AGDUFA II, an abbreviated application for an animal generic drug subject to the criteria in section 512(d)(4) of the FD&C Act and submitted on or after October 1, 2013, shall be subject to 50 percent of the fee applicable to all other abbreviated applications for a generic new animal drug.

Regarding original submissions of abbreviated applications for generic new animal drugs, FDA is assuming that the number of applications that will pay fees in FY 2014 will equal the average number of submissions over the 4 most recent completed years (2009–2012). This may not fully account for possible year to year fluctuations in numbers of fee-paying applications, but FDA believes that this is a reasonable approach after 5 years of experience with this program.

The average number of original submissions of abbreviated applications for generic new animal drugs over the 4 most recently completed years is 9.3 applications not subject to the criteria in section 512(d)(4) of the FD&C Act and 2 submissions subject to the criteria in section 512(d)(4). Each of the submissions described under section 512(d)(4) of the FD&C Act pays 50 percent of the fee paid by the other applications, and will be counted as one half of a fee. Adding all of the applications not subject to the criteria in section 512(d)(4) of the FD&C Act and 50 percent of the number which are subject to such criteria results in a total of 10.3 anticipated full fees.

Under AGDUFA I, FDA estimated the number of reactivations of abbreviated applications for generic new animal drugs which had been originally submitted prior to July 1, 2008. That number decreased over the years of AGDUFA I, to the point that FDA no longer expects to receive any

reactivations of applications initially submitted prior to July 1, 2008, and will include no provision for them in its fee estimates. Should such a submission be made, of course, it will still be expected to pay the appropriate fee.

Based on the previous assumptions, FDA is estimating that it will receive a total of 10.3 fee-paying generic new animal drug applications in FY 2014 (9.3 original applications paying a full fee and 2 applications subject to the criteria described in section 512(d)(4) of the FD&C Act that combined will pay 1 full fee).

B. Fee Rates for FY 2014

FDA must set the fee rates for FY 2014 so that the estimated 10.3 abbreviated applications that pay the fee will generate a total of $1,832,000. To generate this amount, the fee for a generic new animal drug application, rounded to the nearest hundred dollars, will have to be $177,900, and for those applications that are subject to the criteria set forth in section 512(d)(4) of the FD&C Act 50 percent of that amount, or $88,950.

IV. Generic New Animal Drug Product Fee Calculations for FY 2014

A. Product Fee Revenues and Numbers of Fee-Paying Products

The generic new animal drug product fee (also referred to as the product fee) must be paid annually by the person named as the applicant in an abbreviated new animal drug application or supplemental abbreviated application for generic new animal drugs for an animal drug product submitted for listing under section 510 of the FD&C Act (21 U.S.C. 360), and who had an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug pending at FDA after September 1, 2008 (see 21 U.S.C. 379j–21(a)(2)). The term ''generic new animal drug product'' means each specific strength or potency of a particular active ingredient or ingredients in final dosage form marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the national drug code, and for which an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug has been approved (21 U.S.C. 379j–21(k)(6)). The product fees are to be set so that they will generate $2,748,000 in fee revenue for FY 2014. This is the amount set out in the statute and no further adjustments are required for FY 2014.

To set generic new animal drug product fees to realize $2,748,000, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2014. FDA gathered data on all generic new animal drug products that have been submitted for listing under section 510 of the FD&C Act, and matched this to the list of all persons who FDA estimated would have an abbreviated new animal drug application or supplemental abbreviated application pending after September 1, 2008. FDA estimates a total of 360 products submitted for listing by persons who had an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug pending after September 1, 2008. Based on this, FDA believes that a total of 360 products will be subject to this fee in FY 2014.

In estimating the fee revenue to be generated by generic new animal drug product fees in FY 2014, FDA is assuming that 5 percent of the products invoiced, or 18, will not pay fees in FY 2014 due to fee waivers and reductions. FDA has reduced the estimate of the percentage of products that will not pay fees from 10 percent to 5 percent this year, based on historical data over the past 5 years.

Accordingly, the Agency estimates that a total of 342 (360 minus 18) products will be subject to product fees in FY 2014.

B. Product Fee Rates for FY 2014

FDA must set the fee rates for FY 2014 so that the estimated 342 products that pay fees will generate a total of $2,748,000. To generate this amount will require the fee for a generic new animal drug product, rounded to the nearest 5 dollars, to be $8,035.

V. Generic New Animal Drug Sponsor Fee Calculations for FY 2014

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The generic new animal drug sponsor fee (also referred to as the sponsor fee) must be paid annually by each person who: (1) Is named as the applicant in an abbreviated application for a generic new animal drug, except for an approved application for which all subject products have been removed from listing under section 510 of the FD&C Act, or has submitted an investigational submission for a generic new animal drug that has not been terminated or otherwise rendered inactive and (2) had an abbreviated application for a generic new animal drug, supplemental abbreviated application for a generic new animal drug, or investigational submission for a generic new animal drug pending at FDA after September 1, 2008 (see 21 U.S.C. 379j–21(k)(7) and 379j–21(a)(3)). A generic new animal drug sponsor is subject to only one such fee each fiscal year (see 21 U.S.C. 379j–21(a)(3)(C)). Applicants with more than six approved abbreviated applications will pay 100 percent of the sponsor fee; applicants with two to six approved abbreviated applications will pay 75 percent of the sponsor fee; and applicants with one or fewer approved abbreviated applications will pay 50 percent of the sponsor fee (see 21 U.S.C. 379j–21(a)(3)(C)). The sponsor fees are to be set so that they will generate $2,748,000 in fee revenue for FY 2014. This is the amount set out in the statute and no adjustments are required for FY 2014.

To set generic new animal drug sponsor fees to realize $2,748,000, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2014. FDA now has 4 complete years of experience with collecting these sponsor fees. Based on the number of firms that meet this definition and the average number of firms paying fees at each level over the 44 completed years of AGDUFA (FY 2009 through FY 2012), FDA estimates that in FY 2014, 12 sponsors will pay 100 percent fees, 13 sponsors will pay 75 percent fees, and 36 sponsors will pay 50 percent fees. That totals the equivalent of 39.75 full sponsor fees (12 times 100 percent or 12, plus 13 times 75 percent or 9.75, plus 36 times 50 percent or 18.0).

FDA estimates that about 5 percent of all of these sponsors, or 1.99, may qualify for a minor use/minor species fee waiver (see 21 U.S.C. 379j–21(d)). FDA has reduced the estimate of the percentage of sponsors that will not pay fees from 10 percent to 5 percent this year, based on historical data over the past 5 years.

Accordingly, the Agency estimates that the equivalent of 37.76 full sponsor fees (39.75 minus 1.99) are likely to be paid in FY 2014.

B. Sponsor Fee Rates for FY 2014

FDA must set the fee rates for FY 2014 so that the estimated equivalent of 37.76 full sponsor fees will generate a total of $2,748,000. To generate this amount will require the 100 percent fee for a generic new animal drug sponsor, rounded to the nearest $50, to be $72,800. Accordingly, the fee for those paying 75 percent of the full sponsor fee will be $54,600, and the fee for those

paying 50 percent of the full sponsor fee will be $36,400.

VI. Fee Schedule for FY 2014

The fee rates for FY 2014 are summarized in table 1 of this document.

TABLE 1—FY 2014 FEE RATES

Generic new animal drug user fee category	Fee rate for FY 2014
Abbreviated Application Fee for Generic New Animal Drug except those subject to the criteria in section 512(d)(4)	$177,900
Abbreviated Application Fee for Generic New Animal Drug subject to the criteria in section 512(d)(4)	88,950
Generic New Animal Drug Product Fee	8,035
100 Percent Generic New Animal Drug Sponsor Fee[1]	72,800
75 Percent Generic New Animal Drug Sponsor Fee[1]	54,600
50 Percent Generic New Animal Drug Sponsor Fee[1]	$36,400

[1] An animal drug sponsor is subject to only one fee each fiscal year.

VII. Procedures for Paying FY 2014 Generic New Animal Drug User Fees

A. Abbreviated Application Fees and Payment Instructions

The FY 2014 fee established in the new fee schedule must be paid for an abbreviated new animal drug application subject to fees under AGDUFA that is submitted on or after October 1, 2013. Payment must be made in U.S. currency from a U.S. bank by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration, by wire transfer, or by automatic clearing house using Pay.gov. (The Pay.gov payment option is available to you after you submit a cover sheet. Click the ''Pay Now'' button). On your check, bank draft, U.S. or postal money order, please write your application's unique Payment Identification Number, beginning with the letters ''AG,'' from the upper right-hand corner of your completed Animal Generic Drug User Fee Cover Sheet. Also write the FDA post office box number (P.O. Box 953877) on the enclosed check, bank draft, or money order. Your payment and a copy of the completed Animal Generic Drug User Fee Cover Sheet can be mailed to: Food and Drug Administration, P.O. Box 953877, St. Louis, MO 63195–3877.

If payment is made via wire transfer, send payment to U. S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Name: Food and Drug Administration, Account No.: 75060099, Routing No.: 021030004, Swift No.: FRNYUS33. You are responsible for any administrative costs associated with the processing of a wire transfer. Contact your bank or financial institution about the fee and add it to your payment to ensure that your fee is fully paid.

If you prefer to send a check by a courier such as Federal Express or United Parcel Service, the courier may deliver the check and printed copy of the cover sheet to: U.S. Bank, Attn: Government Lockbox 953877, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This address is for courier delivery only. If you have any questions concerning courier delivery contact the U.S. Bank at 314–418–4013. This phone number is only for questions about courier delivery.)

The tax identification number of FDA is 53–0196965. (**Note:** In no case should the payment for the fee be submitted to FDA with the application.)

It is helpful if the fee arrives at the bank at least a day or two before the abbreviated application arrives at FDA's Center for Veterinary Medicine. FDA records the official abbreviated application receipt date as the later of the following: The date the application was received by FDA's Center for Veterinary Medicine, or the date U.S. Bank notifies FDA that your payment in the full amount has been received, or when the U. S. Department of the Treasury notifies FDA of payment. U.S. Bank and the United States Treasury are required to notify FDA within 1 working day, using the Payment Identification Number described previously.

B. Application Cover Sheet Procedures

Step One—Create a user account and password. Log onto the AGDUFA Web site at *http://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/ucm137049.htm* and scroll down the page until you find the link ''Create AGDUFA User Fee Cover Sheet.'' Click on that link and follow the directions. For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process.

Step Two—Create an Animal Generic Drug User Fee Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your user name and password, complete the steps required to create an Animal Generic Drug User Fee Cover Sheet. One cover sheet is needed for each abbreviated animal drug application. Once you are satisfied that the data on the cover sheet is accurate and you have finalized the Cover Sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy of your cover sheet showing your unique Payment Identification Number.

Step Three—Send the payment for your application as described in Section VII.A of this document.

Step Four—Please submit your application and a copy of the completed Animal Generic Drug User Fee Cover Sheet to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855.

C. Product and Sponsor Fees

By December 31, 2013, FDA will issue invoices and payment instructions for product and sponsor fees for FY 2014 using this fee schedule. Fees will be due by January 31, 2014. FDA will issue invoices in November 2014 for any products and sponsors subject to fees for FY 2014 that qualify for fees after the December 2013 billing.

Dated: July 29, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0007]

Biosimilar User Fee Rates for Fiscal Year 2014

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for biosimilar user fees for fiscal year (FY) 2014. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Biosimilar User Fee Act of 2012 (BsUFA), which was signed by the President on July 9, 2012, authorizes FDA to assess and collect user fees for certain activities in connection with biosimilar biological product development, for certain applications and supplements for approval of biosimilar biological products, on establishments where approved biosimilar biological product products are made, and on biosimilar biological products after approval. BsUFA directs FDA to establish, before the beginning of each fiscal year, the initial and annual biosimilar biological product development (BPD) fees, the reactivation fee, and the biosimilar biological product application, establishment, and product fees. These fees are effective on October 1, 2013, and will remain in effect through September 30, 2014.

FOR FURTHER INFORMATION CONTACT: David Miller, Office of Financial Management (HFA–100), Food and Drug Administration, 1350 Piccard Dr., PI50, Rm. 210J, Rockville, MD 20850, 301–796–7103.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 744G, 744H, and 744I of the FD&C Act (21 U.S.C. 379j–51, 379j–52, and 379j–53), as added by BsUFA (Title IV of the Food and Drug Administration Safety and Innovation Act, Pub. L. 112–144), establish fees for biosimilar biological products. Under section 744H(a)(1)(A) of the FD&C Act, the initial BPD fee for a product is due when the sponsor submits an investigational new drug (IND) application that FDA determines is intended to support a biosimilar biological product application for the product, or within 5 calendar days after FDA grants the first BPD meeting for the product, whichever occurs first. A sponsor who has paid the initial BPD fee for a product is considered to be participating in FDA's BPD Program for that product.

Under section 744H(a)(1)(B) of the FD&C Act, once a sponsor has paid the initial BPD fee for a product, the annual BPD fee for the product is assessed beginning in the next fiscal year. The annual BPD fee is assessed for the product each fiscal year until the sponsor submits a marketing application for the product that is accepted for filing, or discontinues participation in FDA's BPD Program for the product.

Under section 744H(a)(1)(D) of the FD&C Act, if a sponsor has discontinued participation in FDA's BPD Program for a product, and wants to again engage with FDA on development of the product as a biosimilar biological product, the sponsor must pay a reactivation fee to resume participation in the BPD Program for that product. The reactivation fee is assessed when the sponsor submits an IND for an investigation that FDA determines is intended to support a biosimilar biological product application, or within 5 calendar days after FDA grants the sponsor's request for a BPD meeting for a product, whichever occurs first. Annual BPD fees will resume beginning in the fiscal year after the year in which the reactivation fee was paid.

BsUFA also establishes fees for certain types of applications and supplements for approval of biosimilar biological products, establishments where approved biosimilar biological products are made, and on biosimilar biological products after approval (section 744H(a)(2), 744H(a)(3) and 744H(a)(4), respectively, of the FD&C Act). When certain conditions are met, FDA may grant small businesses a waiver from the biosimilar biological product application fee (section 744H(c)(1) of the FD&C Act).

Under BsUFA, the initial and annual BPD fee rates for a fiscal year are equal to 10 percent of the fee rate established under the Prescription Drug User Fee Act (PDUFA) for an application requiring clinical data for that FY. The reactivation fee is equal to 20 percent of the fee rate established under PDUFA for an application requiring clinical data for that fiscal year. Finally, the application, establishment, and product fee rates under BsUFA are equal to the application, establishment, and product fee rates under PDUFA, respectively.

II. Fee Amounts for FY 2014

BsUFA directs FDA to use the yearly fee amounts established for PDUFA to calculate the biosimilar biological product fee rates in each fiscal year. For more information about BsUFA, please refer to the FDA Web site at *http://www.fda.gov/ForIndustry/UserFees/BiosimilarUserFeeActBsUFA/default.htm.* PDUFA fee calculations for FY 2014 are published elsewhere in this issue of the **Federal Register.** The BsUFA fee calculations for FY 2014 are described in this document.

A. Initial and Annual BPD Fees; Reactivation Fees

Under BsUFA, the initial and annual BPD fees equal 10 percent of the PDUFA fee for an application requiring clinical data, and the reactivation fee equals 20 percent of the PDUFA fee for an application requiring clinical data. The FY 2014 fee for an application requiring clinical data under PDUFA is $2,169,100. Multiplying the PDUFA application fee, $2,169,100, by .1 results in FY 2014 initial and annual BPD fees of $216,910. Multiplying the PDUFA application fee, $2,169,100, by .2 results in an FY 2014 reactivation fee of $433,820.

B. Application and Supplement Fees

The FY 2014 fee for a biosimilar biological product application requiring clinical data equals the PDUFA fee for an application requiring clinical data, $2,169,100, and the FY 2014 fee for a biosimilar biological product application not requiring clinical data equals half this amount, $1,084,550. However, under section 744H(a)(2)(A) of the FD&C Act, if a sponsor that submits a biosimilar biological product application has previously paid initial BPD fees, annual BPD fees, and/or reactivation fees for the product that is the subject of the application, the fee for the application is reduced by the cumulative amount of these previously paid fees. The FY 2014 fee for a biosimilar biological product supplement with clinical data is $1,084,550, which is half the fee for a biosimilar biological product application requiring clinical data.

C. Establishment Fee

The FY 2014 biosimilar biological product establishment fee is set equal to the FY 2014 PDUFA establishment fee of $554,600.

D. Product Fee

The FY 2014 biosimilar biological product fee is set equal to the FY 2014 PDUFA product fee of $104,060.

III. Fee Schedule for FY 2014

The fee rates for FY 2014 are set out in Table 1.

TABLE 1—FEE SCHEDULE FOR FY 2014

Fee category	Fee rates for FY 2014
Initial BPD	$216,910
Annual BPD	216,910
Reactivation	433,820
Applications [1]	
Requiring clinical data	2,169,100
Not requiring clinical data	1,084,550
Supplement requiring clinical data	1,084,550
Establishment	554,600
Product	104,060

[1] Under section 744H(a)(2)(A) of the FD&C Act, if a sponsor that submits a biosimilar biological product application has previously paid initial BPD fees, annual BPD fees, and/or reactivation fees for the product that is the subject of the application, the fee for the application is reduced by the cumulative amount of these previously paid fees.

IV. Fee Payment Options and Procedures

A. Initial BPD, Reactivation, Application, and Supplement Fees

The fees established in the new fee schedule are effective October 1, 2013. The initial BPD fee for a product is due when the sponsor submits an IND that FDA determines is intended to support a biosimilar biological product application for the product, or within 5 calendar days after FDA grants the first BPD meeting for the product, whichever occurs first. For sponsors who have discontinued participation in the BPD Program, a reactivation fee will be due when the sponsor submits an IND for an investigation that FDA determines is intended to support a biosimilar biological product application, or within 5 calendar days after FDA grants the sponsor's request for a BPD meeting for a product, whichever occurs first.

The application or supplement fee for a biosimilar biological product is due upon submission of the application or supplement.

To make a payment of the initial BPD, reactivation, supplement, or application fee, you must complete the Biosimilar User Fee Cover Sheet, available on FDA's Web site (*http://www.fda.gov/ForIndustry/UserFees/BiosimilarUserFeeActBsUFA/default.htm*) starting October 1, 2013, and generate a user fee identification (ID) number. Payment must be made in U.S. currency by electronic check, check, bank draft, U.S. postal money order, or wire transfer.

FDA has partnered with the U.S. Department of the Treasury to use Pay.gov, a Web-based payment application, for online electronic payment. The Pay.gov feature is available on FDA's Web site after completing the Biosimilar User Fee Cover Sheet and generating the user fee ID number.

Please include the user fee ID number on your check, bank draft, or postal money order, and make it payable to the order of the Food and Drug Administration. Your payment can be mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. If checks are to be sent by a courier that requests a street address, the courier can deliver the checks to: U.S. Bank, Attention: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only.) Please make sure that the FDA post office box number (P.O. Box 979108) is written on the check, bank draft, or postal money order.

If paying by wire transfer, please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. Please ask your financial institution about the fee and include it with your payment to ensure that your fee is fully paid. The account information is as follows: New York Federal Reserve Bank, U.S. Department of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No.: 75060099, Routing No.: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 1350 Piccard Dr., Rockville, MD, 20850.

The tax identification number of FDA is 53–0196965.

B. Annual BPD, Establishment, and Product Fees

FDA will issue invoices for annual BPD, biosimilar biological product establishment, and biosimilar biological product fees under the new fee schedule in August 2013. Payment instructions will be included in the invoices. Payment will be due on October 1, 2013. FDA will issue invoices in November 2014 for any annual BPD, products and establishments subject to fees for FY 2014 that qualify for fee assessments after the August 2013 billing.

Dated: July 29, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–18621 Filed 8–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0010]

Cooperative Agreement to Support the Food and Agriculture Organization

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to receive and consider a single source application for award of a cooperative agreement in fiscal year 2013 to the Food and Agriculture Organization (FAO) of the United Nations to support global strategies that address food safety and public health.

The goal of this collaborative project between FDA and FAO is to contribute to the knowledge base and development of food safety systems globally due to the increasingly diverse and complex food supply. The project is also designed to enhance and broaden FDA's ability to address global food safety and public health issues associated with food as well as provide opportunities to leverage additional resources of other countries. The collaborative project will also support the FDA's implementation of the FDA Food Safety Modernization Act (FSMA), including FDA's International Food Safety Capacity Building Plan, which emphasizes the concept of preventing food safety-related problems before they occur and the importance of establishing strong relationships and mutual support among all stakeholders, including multilateral organizations, to improve worldwide food safety. In addition, the collaborative project will support food safety, nutrition, and public health programs that align with FDA's mission.

DATES: Important dates are as follows:

1. The application due date is September 1, 2013.

2. The anticipated start date is September 2013.

3. The expiration date is September 2, 2013.

ADDRESSES: Submit electronic applications to: *http://www.grants.gov.* For more information, see section III of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: *Scientific/Programmatic Contact:* Julie Moss, Center for Food Safety and Applied Nutrition (HFS–550), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2031, *Julie.moss@fda.hhs.gov. Grants Management Contact:* Gladys

Melendez, Office of Acquisitions and Grant Services (HFA 500), Food and Drug Administration, 5630 Fishers Lane, rm. 2032, Rockville, MD 20857, 301–827–7175, *gladys.bohler@fda.hhs.gov.*

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at *www.fda.gov/food/newsevents/default.htm.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

93.103 RFA–FD–13–037

A. Background

An intergovernmental organization, FAO has 191 Member Nations, two associate members, and one member organization (the European Union). Achieving food security for all is at the heart of FAO's efforts—to make sure people have regular access to enough high-quality food to lead active, healthy lives. FAO's mandate is to raise levels of nutrition, improve agricultural productivity, better the lives of rural populations, and contribute to the growth of the world economy. FAO's activities comprise four main areas:

Putting information within reach: FAO serves as a knowledge network. The organization uses the expertise of its staff—agronomists, foresters, fisheries and livestock specialists, nutritionists, social scientists, economists, statisticians and other professionals—to collect, analyze, and disseminate data that aid development.

Sharing policy expertise: FAO lends its years of experience to member countries in devising agricultural policy, supporting planning, drafting effective legislation, and creating national strategies to achieve rural development and hunger alleviation goals.

Providing a meeting place for nations: As a neutral forum, experts from around the globe convene at headquarters or in field offices to forge agreements on major food and agriculture issues.

Bringing knowledge to the field: FAO provides the technical know-how and mobilizes and manages millions of dollars provided by industrialized countries, development banks, and other sources to make sure the projects achieve their goals.

Capacity Development is a core function highlighted in FAO's new strategic framework. Member Countries place strong emphasis on FAO enhancing delivery in this area as they recently approved the Corporate Strategy on Capacity Development. The Strategy was developed in consultation with Member Countries and all FAO units worldwide. Taking a corporate approach to Capacity Development allows FAO to learn from its collective efforts and to support Member Countries in their own Capacity Development activities. The new FAO Capacity Development framework will guide FAO staff and their partners in analyzing capacities in Member Countries and identifying the appropriate intervention(s) for fostering sustainable development.

FAO supports Member Countries in developing their capacities to effectively manage food safety and quality as a key step to safeguarding the health and well-being of people as well as to accessing domestic, regional, and international markets. Capacity Development in Food Safety and Quality is the process through which relevant stakeholders from farm to table (including government agencies, food enterprises, academia, and consumers) are able to better perform their functions and to assume their responsibilities in ensuring safety and quality of food for domestic consumption and export.

For the Food Safety and Quality Unit (AGN) within FAO, its overall goal is to improve systems of food safety and quality management, based on scientific principles, that lead to reduced foodborne illness and support fair and transparent trade, thereby contributing to economic development, improved livelihoods, and food security. This unit:

1. Provides independent scientific advice on food safety and nutrition, which serves as the basis for international food standards.
2. Develops institutional and individual capacities for food control and food safety management in many countries, including the management of food safety emergencies.
3. Supports processes for the development of food safety policy frameworks.
4. Facilitates global access to information and encourages and supports the development of food safety/quality networks.

While the specific projects to be undertaken under this agreement will be determined following the agreement entering into force, examples of the types of food safety projects of interest to FDA that could be undertaken by the FAO include the following: Development of policy support tools to guide planning and investment in national food control systems; provision of technical advice for the development and improvement of integrated and modern food control systems; enhancement of effective participation in the work of the Codex Alimentarius Commission and other international fora; addressing emerging food safety issues; and development of technical tools and guides related to various technical and managerial aspects of food control. In addition to the aforementioned types of projects, FDA would also be interested in supporting nutrition projects through this Agreement. Examples of such projects include the FAO's Nutrition Education and Communication project focusing on professional education, as well as assistance with countries seeking to develop effective food-based dietary guidelines.

AGN also houses the secretariat of the Joint FAO/World Health Organization Codex Alimentarius Secretariat.

B. Research Objectives

With an increasingly diverse and complex global food supply, FDA's interest is to strengthen food safety systems globally to prevent food safety problems rather than merely reacting to problems after they occur. FDA recognizes that it can't do this alone. By working with other World Trade Organization member countries and partnering with the FAO, FDA can broaden the reach of food safety capacity building efforts.

This Cooperative Agreement will allow FDA to deepen its international food safety capacity building partnerships, provide a wider scope of impact than exists currently, and merge resources with other countries.

This cooperative agreement will provide support so that the FAO can meet the following projected milestones:

1. Contribute to the knowledge base and development of food safety systems due to the increasingly diverse and complex food supply.
2. Enhance and broaden FDA's ability to address global food safety and public health issues associated with food.
3. Provide opportunities to leverage additional resources of other countries.
4. Support FSMA and its International Food Safety Capacity Building Plan, which emphasizes the concept of preventing food safety-related problems before they occur and the importance of establishing strong relationships and mutual support among all stakeholders, including multilateral organizations, to improve worldwide food safety.
5. Support food safety, nutrition, and public health programs that align with FDA's mission.

C. Eligibility Information

Competition is limited to the FAO because, as a global organization with a

well-established, trusted presence, access to 191 Member Nations, and an ability to coordinate capacity building programs at a regional and international level, it is uniquely qualified to further the global food safety capacity building objectives of this cooperative agreement. This ability to advance the objectives of this cooperative agreement through Member Country engagement and leveraging is a requisite for success.

II. Award Information/Funds Available

A. Award Amount

The Center for Food Safety and Applied Nutrition intends to fund one award up to $750,000 total costs (direct plus indirect costs) for FY 2013. Future year amounts will depend on annual appropriations and successful performance.

B. Length of Support

The award will provide 1 year of support and include future recommended support for 4 additional years, contingent upon satisfactory performance in the achievement of project and program reporting objectives during the preceding year and the availability of Federal fiscal year appropriations.

III. Electronic Application, Registration, and Submission

Only electronic applications will be accepted. To submit an electronic application in response to this FOA, applicants should first review the full announcement located at www.fda.gov/food/newsevents/default.htm. (FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the Federal Register.) For all electronically submitted applications, the following steps are required.

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number
- Step 2: Register With System for Award Management (SAM)
- Step 3: Obtain Username & Password
- Step 4: Authorized Organization Representative (AOR) Authorization
- Step 5: Track AOR Status
- Step 6: Register With Electronic Research Administration (eRA) Commons

Steps 1 through 5, in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp.* Step 6, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp.* After you have followed these steps, submit electronic applications to: http://www.grants.gov.

Dated: July 29, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–18631 Filed 8–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Draft Guidance for Industry on Bioequivalence Recommendations for Mesalamine Rectal Suppositories; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Bioequivalence Recommendations for Mesalamine.'' The recommendations provide specific guidance on the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs) for mesalamine rectal suppositories. The draft guidance is a revised version of a previously issued draft guidance on the same subject.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by October 1, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kris Andre, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9326.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm.* As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and provide a meaningful opportunity for the public to consider and comment on those recommendations. This notice announces the availability of a draft guidance on mesalamine (Draft Mesalamine Rectal Suppository BE Recommendations of 2013).

CANASA (Mesalamine, USP) Rectal Suppositories, new drug application 021252, 500 milligram (mg) and 1,000 mg strengths were approved by FDA in January 2001 and November 2004, respectively. The 500 mg strength is no longer marketed. There are no approved ANDAs for this product.

In May 2007, FDA posted on its Web site a draft guidance for industry on the Agency's recommendations for BE studies to support ANDAs for mesalamine rectal suppositories (Draft Mesalamine Rectal Suppository BE Recommendations of May 2007). In that draft guidance, FDA recommended in vivo studies to demonstrate BE of generic mesalamine rectal suppositories: A BE study with clinical endpoints and a fasting BE study with pharmacokinetic endpoints. FDA has reconsidered the recommendations in the Draft Mesalamine Rectal Suppository BE Recommendations of May 2007 and has decided to revise it. In March 2013, FDA withdrew the Draft Mesalamine Rectal Suppository BE Recommendations of May 2007 and posted on its Web site a revised draft guidance for industry, the Draft Mesalamine Rectal Suppository BE Recommendations of 2013. In this revised draft guidance, FDA recommends in vivo and in vitro studies to demonstrate BE of generic mesalamine rectal suppositories: A fasting BE study with pharmacokinetic endpoints and comparative in vitro studies (melting point, differential scanning calorimetry, density, and viscosity). FDA is no longer

recommending a BE study with clinical endpoints for demonstration of BE of generic mesalamine rectal suppositories.

In July 2007, Axcan Scandipharm (Axcan), manufacturer of CANASA, submitted a citizen petition requesting that FDA withhold approval of any ANDA application for a generic version of CANASA (mesalamine rectal suppositories) unless certain studies that demonstrated BE were conducted (Docket No. FDA–2007–P–0010, formerly 2007P–0302/CP1). FDA is reviewing the issues raised in the petition and is also reviewing the supplemental information submitted to the docket for this petition. FDA will consider any comments on the Draft Mesalamine Rectal Suppository BE Recommendations of 2013 before responding to Axcan's citizen petition.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on the design of BE studies to support ANDAs for mesalamine rectal suppositories. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: July 29, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–18629 Filed 8–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0007]

Food Safety Modernization Act Domestic and Foreign Facility Reinspection, Recall, and Importer Reinspection Fee Rates for Fiscal Year 2014

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2014 fee rates for certain domestic and foreign facility reinspections, failures to comply with a recall order, and importer reinspections that are authorized by the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA). These fees are effective on October 1, 2013, and will remain in effect through September 30, 2014.

FOR FURTHER INFORMATION CONTACT: Hunter Herrman, Office of Resource Management, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., rm. 2049, Rockville, MD 20857, 240–402–3102, email: *Hunter.Herrman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 107 of FSMA (Pub. L. 111–353) added section 743 to the FD&C Act (21 U.S.C. 379j–31) to provide FDA with the authority to assess and collect fees from, in part: (1) The responsible party for each domestic facility and the U.S. agent for each foreign facility subject to a reinspection, to cover reinspection-related costs; (2) the responsible party for a domestic facility and an importer who does not comply with a recall order, to cover food [1] recall activities associated with such order; and (3) each importer subject to a reinspection to cover reinspection-related costs (sections 743(a)(1)(A), (B), and (D) of the FD&C Act). Section 743 of the FD&C Act directs FDA to establish fees for each of these activities based on an estimate of 100 percent of the costs of each activity for each year (section 743(b)(2)(A), (B), and (D)), and these fees must be made available solely to pay for the costs of each activity for which the fee was incurred (section 743(b)(3)). These fees are effective on October 1, 2013, and will remain in effect through September 30, 2014. Section 743(b)(2)(B)(iii) of the FD&C Act directs FDA to develop a proposed set of guidelines in consideration of the burden of fee amounts on small businesses. As a first step in developing these guidelines, FDA invited public comment on the potential impact of the fees authorized by section 743 of the FD&C Act on small businesses (76 FR 45818, August 1, 2011). The comment period for this request ended November 30, 2011. As stated in FDA's September 2011 ''Guidance for Industry: Implementation of the Fee Provisions of Section 107 of the FDA Food Safety Modernization Act,'' (*http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/FoodDefense/ucm274176.htm*), because FDA recognizes that for small businesses the full cost recovery of FDA reinspection or recall oversight could impose severe economic hardship, FDA intends to consider reducing certain fees for those firms. FDA is currently developing a guidance document to outline the process through which firms may request such a reduction of fees. FDA does not intend to issue invoices for reinspection or recall order fees until this guidance document has been published.

In addition, as stated in the September 2011 Guidance, FDA is in the process of considering various issues associated with the assessment and collection of importer reinspection fees. FDA is currently developing a guidance document that will provide information regarding fees that the Agency may assess and collect from importers to cover reinspection-related costs. The fee rates set forth in this notice will be used to determine any importer reinspection fees assessed in FY 2014.

II. Estimating the Average Cost of a Supported Direct FDA Work Hour for FY 2014

FDA is required to estimate 100 percent of its costs for each activity in order to establish fee rates for FY 2014. In each year, the costs of salary (or personnel compensation) and benefits for FDA employees account for between 50 and 60 percent of the funds available to, and used by, FDA. Almost all of the remaining funds (or the operating funds) available to FDA are used to support FDA employees for paying rent, travel, utility, information technology, and other operating costs.

[1] The term ''food'' for purposes of this document has the same meaning as such term in section 201(f) of the FD&C Act (21 U.S.C. 321(f)).

A. Estimating the Full Cost per Direct Work Hour in FY 2012

In general, the starting point for estimating the full cost per direct work hour is to estimate the cost of a full-time-equivalent (FTE) or paid staff year for the relevant activity. This is most reasonably done by dividing the total funds allocated to the elements of FDA primarily responsible for carrying out the activities for which fees are being collected by the total FTEs allocated to those activities, using information from the most recent FY for which data are available. For the purposes of the reinspection and recall order fees authorized by section 743 of the FD&C Act (the fees that are the subject of this notice), primary responsibility for the activities for which fees will be collected rests with FDA's Office of Regulatory Affairs (ORA), which carries out inspections and other field-based activities on behalf of FDA's product centers, including the Center for Food Safety and Applied Nutrition (CFSAN) and the Center for Veterinary Medicine (CVM). Thus, as the starting point for estimating the full cost per direct work hour, FDA will use the total funds allocated to ORA for CFSAN and CVM related field activities. The most recent FY with available data is FY 2012. In that year, FDA obligated a total of $697,628,866 for ORA in carrying out the CFSAN and CVM related field activities work, excluding the cost of inspection travel. In that same year, the number of ORA staff primarily conducting the CFSAN and CVM related field activities was 2,944 FTEs or paid staff years. Dividing $697,628,866 by 2,944 FTEs, results in an average cost of $236,966 per paid staff year, excluding travel costs.

Not all of the FTEs required to support the activities for which fees will be collected are conducting direct work such as inspecting or reinspecting facilities, examining imports, or monitoring recalls. Data collected over a number of years and used consistently in other FDA user fee programs (e.g., under the Prescription Drug User Fee Act (PDUFA) and the Medical Device User Fee and Modernization Act (MDUFA)) show that every seven FTEs who perform direct FDA work require three indirect and supporting FTEs. These indirect and supporting FTEs function in budget, facility, human resource, information technology, planning, security, administrative support, legislative liaison, legal counsel, program management, and other essential program areas. On average, two of these indirect and supporting FTEs are located in ORA or the FDA center where the direct work is being conducted, and one of them is located in the Office of the Commissioner. To get the fully supported cost of an FTE, FDA needs to multiply the average cost of an FTE by 1.43, to take into account the indirect and supporting functions. The 1.43 factor is derived by dividing the 10 fully supported FTEs by 7 direct FTEs. In FY 2012, the average cost of an FTE was $236,966. Multiplying this amount by 1.43 results in an average fully supported cost of $338,861 per FTE, excluding the cost of inspection travel.

To calculate an hourly rate, FDA must divide the average fully supported cost of $338,861 per FTE by the average number of supported direct FDA work hours. See Table 1.

TABLE 1—SUPPORTED DIRECT FDA WORK HOURS IN A PAID STAFF YEAR

Total number of hours in a paid staff year	2,080
Less:	
10 paid holidays	80
20 days of annual leave	160
10 days of sick leave	80
10 days of training	80
2 hours of meetings per week	80
Net Supported Direct FDA Work Hours Available for Assignments	1,600

Dividing the average fully supported cost of an FTE in FY 2012 ($338,861) by the total number of supported direct work hours available for assignment (1,600) results in an average fully supported cost of $212 (rounded to the nearest dollar), excluding inspection travel costs, per supported direct work hour in FY 2012—the last FY for which data are available.

B. Adjusting FY 2012 Costs for Inflation To Estimate FY 2014 Costs

To adjust the hourly rate for FY 2014, FDA must estimate the cost of inflation in each year for FY 2013 and FY 2014. FDA uses the method prescribed for estimating inflationary costs under the PDUFA provisions of the FD&C Act (section 736(c)(1) (21 U.S.C. 379h(c)(1)), the statutory method for inflation adjustment in the FD&C Act that we have used consistently. FDA previously determined the FY 2013 inflation rate to be 2.01 percent; this rate was published in the FY 2013 PDUFA user fee rates notice in the **Federal Register** of August 1, 2012 (77 FR 45639). Utilizing the method set forth in section 736(c)(1) of the FD&C Act, FDA has calculated an inflation rate of 2.20 percent for FY 2014 and FDA intends to use this inflation rate to make inflation adjustments for FY 2014 for several of its user fee programs; the derivation of this rate is published elsewhere in this issue of the **Federal Register** in the FY 2014 notice for the PDUFA user fee rates. The compounded inflation rate for FYs 2013 and 2014, therefore, is 4.25 percent (one plus 2.01 percent times one plus 2.20 percent).

Increasing the FY 2012 average fully supported cost per supported direct FDA work hour of $212 (excluding inspection travel costs) by 4.25 percent yields an inflationary adjusted estimated cost of $221 per a supported direct work hour in FY 2014, excluding inspection travel costs. This is the base unit fee that FDA will use in determining the hourly fee rate for reinspection and recall order fees for FY 2014, prior to including domestic or foreign travel costs as applicable for the activity.

In FY 2012, ORA spent a total of $5,399,442 for domestic regulatory inspection travel costs and General Services Administration Vehicle costs related to FDA's CFSAN and CVM field activities programs. The total ORA domestic travel costs spent is then divided by the total of 12,302 CFSAN and CVM domestic inspections, which averages a total of $439 per inspection. These inspections average 29.19 hours per inspection. Dividing $439 per inspection by 29.19 hours per inspection results in a total and an additional cost of $15 per hour spent for domestic inspection travel costs in FY 2012. To adjust $15 for inflationary increases in FY 2013 and FY 2014, FDA must multiply it by the same inflation factor mentioned previously in this document (1.0425) which results in an estimated cost of $16 dollars per paid hour in addition to $221 for a total of $237 per paid hour ($221 plus $16) for each direct hour of work requiring domestic inspection travel. These are the rates that FDA will use in charging fees in FY 2014 when domestic travel is required.

In FY 2012, ORA spent a total of $2,831,056 on a total of 301 foreign inspection trips related to FDA's CFSAN and CVM field activities programs, which averaged a total of $9,406 per foreign inspection trip. These trips averaged 3 weeks (or 120 paid hours) per trip. Dividing $9,406 per trip by 120 hours per trip results in a total and an additional cost of $78 per paid hour spent for foreign inspection travel costs in FY 2012. To adjust $78 for inflationary increases in FY 2013 and FY 2014, FDA must multiply it by the same inflation factor mentioned previously in this document (1.0425) which results in an estimated cost of

$81 dollars per paid hour in addition to $221 for a total of $302 per paid hour ($221 plus $81) for each direct hour of work requiring foreign inspection travel. These are the rates that FDA will use in charging fees in FY 2014 when foreign travel is required.

TABLE 2—FSMA FEE SCHEDULE FOR FY 2014

Fee category	Fee rates for FY 2014
Hourly rate if domestic travel is required	$237
Hourly rate if foreign travel is required	302

III. Fees for Reinspections of Domestic or Foreign Facilities Under Section 743(a)(1)(A)

A. What will cause this fee to be assessed?

The fee will be assessed for a reinspection conducted under section 704 of the FD&C Act (21 U.S.C. 374) to determine whether corrective actions have been implemented and are effective and compliance has been achieved to the Secretary of Health and Human Services' (the Secretary) (and, by delegation, FDA's) satisfaction at a facility that manufactures, processes, packs or holds food for consumption necessitated as a result of a previous inspection (also conducted under section 704) of this facility which had a final classification of Official Action Indicated (OAI) conducted by or on behalf of FDA, when FDA determined the non-compliance was materially related to food safety requirements of the FD&C Act. FDA considers such non-compliance to include non-compliance with a statutory or regulatory requirement under section 402 of the FD&C Act (21 U.S.C. 342) and section 403(w) of the FD&C Act (21 U.S.C. 343(w)). However, FDA does not consider non-compliance that is materially related to a food safety requirement to include circumstances where the non-compliance is of a technical nature and not food safety related (e.g., failure to comply with a food standard or incorrect font size on a food label). Determining when non-compliance, other than under sections 402 and 403(w) of the FD&C Act, is materially related to a food safety requirement of the FD&C Act may depend on the facts of a particular situation. FDA intends to issue guidance to provide additional information about the circumstances under which FDA would consider non-compliance to be materially related to a food safety requirement of the FD&C Act.

Under section 743(a)(1)(A) of the FD&C Act, FDA is directed to assess and collect fees from ''the responsible party for each domestic facility (as defined in section 415(b) (21 U.S.C. 350d)) and the United States agent for each foreign facility subject to a reinspection'' to cover reinspection-related costs.

Section 743(a)(2)(A)(i) of the FD&C Act defines the term ''reinspection'' with respect to domestic facilities as ''1 or more inspections conducted under section 704 subsequent to an inspection conducted under such provision which identified non-compliance materially related to a food safety requirement of th[e] Act, specifically to determine whether compliance has been achieved to the Secretary's satisfaction.''

The FD&C Act does not contain a definition of ''reinspection'' specific to foreign facilities. In order to give meaning to the language in section 743(a)(1)(A) of the FD&C Act to collect fees from the U.S. agent of a foreign facility subject to a reinspection, the Agency is using the following definition of ''reinspection'' for purposes of assessing and collecting fees under section 743(a)(1)(A), with respect to a foreign facility: ''1 or more inspections conducted by officers or employees duly designated by the Secretary subsequent to such an inspection which identified non-compliance materially related to a food safety requirement of the FD&C Act, specifically to determine whether compliance has been achieved to the Secretary's (and, by delegation, FDA's) satisfaction.''

This definition allows FDA to fulfill the mandate to assess and collect fees from the U.S. agent of a foreign facility in the event that an inspection reveals non-compliance materially related to a food safety requirement of the FD&C Act, causing one or more subsequent inspections to determine whether compliance has been achieved to the Secretary's (and, by delegation, FDA's) satisfaction. By requiring the initial inspection to be conducted by officers or employees duly designated by the Secretary, the definition ensures that a foreign facility would be subject to fees only in the event that FDA, or an entity designated to act on its behalf, has made the requisite identification at an initial inspection of non-compliance materially related to a food safety requirement of the FD&C Act. The definition of ''reinspection-related costs'' in section 743(a)(2)(B) of the FD&C Act relates to both a domestic facility reinspection and a foreign facility reinspection, as described in section 743(a)(1)(A).

B. Who will be responsible for paying this fee?

The FD&C Act states that this fee is to be paid by the responsible party for each domestic facility (as defined in section 415(b) of the FD&C Act) and by the U.S. agent for each foreign facility (section 743(a)(1)(A) of the FD&C Act). This is the party to whom FDA will send the invoice for any fees that are assessed under this section.

C. How much will this fee be?

The fee is based on the number of direct hours spent on such reinspections, including time spent conducting the physical surveillance and/or compliance reinspection at the facility, or whatever components of such an inspection are deemed necessary, making preparations and arrangements for the reinspection, traveling to and from the facility, preparing any reports, analyzing any samples or examining any labels if required, and performing other activities as part of the OAI reinspection until the facility is again determined to be in compliance. The direct hours spent on each such reinspection will be billed at the appropriate hourly rate shown in table 2 of this document.

IV. Fees for Non-Compliance With a Recall Order Under Section 743(a)(1)(B)

A. What will cause this fee to be assessed?

The fee will be assessed for not complying with a recall order under section 423(d) (21 U.S.C. 350l(d)) or section 412(f) of the FD&C Act (21 U.S.C. 350a(f)) to cover food recall activities associated with such order performed by the Secretary (and by delegation, FDA) (section 743(a)(1)(B) of the FD&C Act). Non-compliance may include the following: (1) Not initiating a recall as ordered by FDA; (2) not conducting the recall in the manner specified by FDA in the recall order; or (3) not providing FDA with requested information regarding the recall, as ordered by FDA.

B. Who will be responsible for paying this fee?

Section 743(a)(1)(B) of the FD&C Act states that the fee is to be paid by the responsible party for a domestic facility (as defined in section 415(b) of the FD&C Act) and an importer who does not comply with a recall order under section 423 or under section 412(f) of the FD&C Act. In other words, the party paying the fee would be the party that received the recall order.

C. How much will this fee be?

The fee is based on the number of direct hours spent on taking action in response to the firm's failure to comply with a recall order. Types of activities could include conducting recall audit checks, reviewing periodic status reports, analyzing the status reports and the results of the audit checks, conducting inspections, traveling to and from locations, and monitoring product disposition. The direct hours spent on each such recall will be billed at the appropriate hourly rate shown in table 2 of this document.

V. How must the fees be paid?

An invoice will be sent to the responsible party for paying the fee after FDA completes the work on which the invoice is based. Payment must be made within 90 days of the invoice date in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Detailed payment information will be included with the invoice when it is issued.

VI. What are the consequences of not paying these fees?

Under section 743(e)(2) of the FD&C Act, any fee that is not paid within 30 days after it is due shall be treated as a claim of the U.S. Government subject to provisions of subchapter II of chapter 37 of title 31, United States Code.

Dated: July 29, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–18622 Filed 8–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0473]

Human Immunodeficiency Virus Patient-Focused Drug Development and Human Immunodeficiency Virus Cure Research; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for the notice of public meeting entitled ''Human Immunodeficiency Virus (HIV) Patient-Focused Drug Development and HIV Cure Research,'' published in the **Federal Register** of May 21, 2013 (78 FR 29755). In that notice, FDA requested public comment regarding patients' perspective on current approaches to managing HIV, symptoms experienced because of HIV or its treatment, and issues related to HIV cure research. FDA is reopening the comment period to allow interested persons additional time to submit comments.

DATES: Submit either electronic or written comments to the docket by September 3, 2013.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Pujita Vaidya, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1170, Silver Spring, MD 20993–0002, 301–796–0684, FAX: 301–847–8443, email: *Pujita.Vaidya@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 21, 2013 (78 FR 29755), FDA announced the notice of public meeting entitled ''HIV Patient-Focused Drug Development and HIV Cure Research.'' In that notice, FDA requested public comment on specific questions regarding patients' perspective on current approaches to managing HIV, symptoms experienced because of HIV or its treatment, and issues related to HIV cure research. Interested persons were given until July 14, 2013, to comment on the questions. The Agency is reopening the comment period until September 3, 2013 to allow interested persons additional time to submit comments.

II. Specific Questions for Public Comment

As part of Patient-Focused Drug Development, FDA is gathering input from HIV patients and patient advocates on current approaches to managing HIV, symptoms experienced because of HIV or its treatment, and issues related to HIV cure research. FDA is interested in receiving patient input that addresses the following questions.

Topic 1: Patients' Perspective on Current Approaches to Managing HIV and on Symptoms Experienced Because of HIV or Its Treatment

1. What are you currently doing to help manage your HIV and any symptoms you experience because of your condition or other therapies? (Examples may include prescription medicines, over-the-counter products, and nondrug therapies such as diet modification.)

a. What specific symptoms do your therapies or treatments address?

b. How long have you been on treatment and how has your treatment regimen changed over time?

2. How well does your current treatment regimen treat any significant symptoms of your condition?

a. How well have these treatments worked for you as your condition has changed over time?

b. Are there symptoms that your current regimen does not address at all or does not treat as well as you would like?

3. What are the most significant downsides to your current therapies or treatments, and how do they affect your daily life? (Examples of downsides could include bothersome side effects, physical change to your body because of treatment, going to the hospital for treatment.)

4. Of all the symptoms that you experience because of your condition or because of your therapy or treatment, which one to three symptoms have the most significant impact on your life? (Examples could include diarrhea, insomnia, difficulty concentrating, etc.)

- Are there specific activities that are important to you but that you cannot do at all or as fully as you would like because of your condition? (Examples of activities may include sleeping through the night, daily hygiene, driving, etc.)

5. Assuming there is currently no complete cure for your condition, what specific things would you look for in an ideal therapy or treatment to manage your condition?

Topic 2: Patients' Perspectives on HIV Cure Research

1. What do you believe are the benefits of participating in an HIV cure research study?

2. What would motivate you to participate or to not participate in an HIV cure research study?

3. What risks would you find unacceptable for participating in an HIV cure research study and why? (Examples of risks that may be associated with participation in an HIV cure research study include common

side effects such as nausea and fatigue, and less common but serious adverse events such as blood clots, infection, seizures, and cancer.)

4. In certain HIV cure research studies, you would be asked to stop any other HIV medications that you are currently taking. How would this affect your decision whether to participate in an HIV cure research study?

5. The process of informed consent is an important way for the researchers to communicate the purpose of an HIV research study, as well as its expected benefits and potential risks, so that people can make an informed decision whether to participate in the study.

a. How should the informed consent clearly communicate to you the purpose of an HIV cure research study, particularly when a study is designed only to provide scientific information that could guide future research and development of treatments?

b. How should the informed consent clearly communicate to you the potential benefits of an HIV cure research study? In particular, how should the informed consent describe benefit when we do not think that participants in the study may gain any direct health benefits?

c. How should informed consent communicate clearly to you the potential risks of participating in an HIV cure research study? In particular, how should the informed consent describe a study if there is very limited understanding about how the medications or interventions may affect participants or what are the potential risks of those interventions or medications?

d. Is there any other information that you would find helpful when deciding whether to enter an HIV cure research study?

6. What else do you want FDA to know about HIV Cure Research from your perspective?

III. How To Submit Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

Dated: July 29, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–18630 Filed 8–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0007]

Medical Device User Fee Rates for Fiscal Year 2014

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fee rates and payment procedures for medical device user fees for fiscal year (FY) 2014. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device User Fee Amendments of 2012, which was signed by the President on July 9, 2012 (MDUFA III), authorizes FDA to collect user fees for certain medical device submissions and annual fees both for certain periodic reports and for establishments subject to registration. The FY 2014 fee rates are provided in this document. These fees apply from October 1, 2013, through September 30, 2014. To avoid delay in the review of your application, you should pay the fee before or at the time you submit your application to FDA. The fee you must pay is the fee that is in effect on the later of the date that your application is received by FDA or the date your fee payment is recognized by the U.S. Treasury. If you want to pay a reduced small business fee, you must qualify as a small business before you make your submission to FDA; if you do not qualify as a small business before you make your submission to FDA, you will have to pay the higher standard fee. This document provides information on how the fees for FY 2014 were determined, the payment procedures you should follow, and how you may qualify for reduced small business fees.

FOR FURTHER INFORMATION CONTACT: *For information on Medical Device User Fees:* Visit FDA's Web site at *http://www.fda.gov/mdufa.*

For questions relating to this notice: David Miller, Office of Financial Management (HFA–100), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–796–7103.

SUPPLEMENTARY INFORMATION:

I. Background

Section 738 of the FD&C Act (21 U.S.C. 379j) establishes fees for certain medical device applications, submissions, supplements, and notices (for simplicity, this document refers to these collectively as ''submissions'' or ''applications''); for periodic reporting on class III devices; and for the registration of certain establishments. Under statutorily defined conditions, a qualified applicant may receive a fee waiver or may pay a lower small business fee. (See 21 U.S.C. 379j(d) and (e).) Additionally, the Secretary of Health and Human Services (the Secretary) may, at the Secretary's sole discretion, grant a fee waiver or reduction if the Secretary finds that such waiver or reduction is in the interest of public health. (See 21 U.S.C. 379j(f).)

Under the FD&C Act, the fee rate for each type of submission is set at a specified percentage of the standard fee for a premarket application (a premarket application is a premarket approval application (PMA), a product development protocol (PDP), or a biologics license application (BLA)). The FD&C Act specifies the base fee for a premarket application for each year from FY 2013 through FY 2017; the base fee for a premarket application received by FDA during FY 2014 is $252,960. From this starting point, this document establishes FY 2014 fee rates for other types of submissions, and for periodic reporting, by applying criteria specified in the FD&C Act.

The FD&C Act specifies the base fee for establishment registration for each year from FY 2013 through FY 2017; the base fee for an establishment registration in FY 2014 is $3,200. There is no reduction in the registration fee for small businesses. Each establishment that is registered (or is required to register) with the Secretary under section 510 of the FD&C Act (21 U.S.C. 360) because such establishment is engaged in the manufacture, preparation, propagation, compounding, or processing of a device is required to pay the annual fee for establishment registration.

II. Revenue Amount for FY 2014

The base revenue amount for FY 2014 is $112,580,497, as set forth in the statute prior to the inflation adjustment. MDUFA directs FDA to use the yearly revenue amount as a starting point to set the fee rates for each fee type. The fee calculations for FY 2014 are described in this document.

Inflation Adjustment

MDUFA specifies that the $112,580,497 is to be further adjusted for inflation increases for FY 2014 using two separate adjustments—one for payroll costs and one for non-pay cost (see 21 U.S.C. 379j(c)(2)).

The component of the inflation adjustment for payroll costs shall be one plus the average annual percent change in the cost of all personnel compensation and benefits (PC&B) paid per full-time equivalent position (FTE) at FDA for the first 3 of the 4 preceding FYs, multiplied by .60, or 60 percent (see 21 U.S.C. 379j(c)(2)(C)). The data on total PC&B paid and numbers of FTE paid, from which the average cost per FTE can be derived, are published in FDA's Justification of Estimates for Appropriations Committees.

Table 1 summarizes that actual cost and FTE data for the specified FYs, and provides the percent change from the previous FY and the average percent change over the first 3 of the 4 FYs preceding FY 2014. The 3-year average is 2.05 percent.

TABLE 1—FDA PC&B'S EACH YEAR AND PERCENT CHANGE

Fiscal year	2010	2011	2012	3-Year average
Total PC&B	$1,634,108,000	$1,761,655,000	$1,824,703,000	.....
Total FTE	12,526	13,331	13,382	.....
PC&B per FTE	$130,457	$132,147	$136,355	.....
Percent change from previous year	1.67%	1.30%	3.18%	2.05%

The payroll adjustment is 2.05 percent multiplied by 60 percent, or 1.23 percent.

The statute specifies that the portion of the inflation adjustment for non-payroll costs for FY 2014 is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC-MD-VA-WV; not seasonally adjusted; all items; annual index) for the first 3 of the preceding 4 years of available data multiplied by .40, or 40 percent (see 21 U.S.C. 379j(c)(2)(C)).

Table 2 provides the summary data for the percent change in the specified CPI for the Baltimore-Washington area. This data is published by the Bureau of Labor Statistics and can be found on their Web site at *http://data.bls.gov/cgi-bin/surveymost?cu* by checking the box marked ''Washington-Baltimore All Items, November 1996 = 100—CUURA311SA0'' and then clicking on the ''Retrieve Data'' button.

TABLE 2—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN BALTIMORE-WASHINGTON AREA CPI

Year	2010	2011	2012	3-Year average
Annual CPI	142.218	146.975	150.212	.....
Annual percent change	1.72%	3.34%	2.20%	2.42%

The non-pay adjustment is 2.42 percent times 40 percent, or .968 percent.

To complete the inflation adjustment, the payroll component (1.230 percent) is added to the non-pay component (0.968 percent), for a total inflation adjustment of 2.198 percent (rounded), and then one is added, making 1.02198. The base revenue amount for FY 2014 ($112,580,497) is then multiplied by 1.02198, yielding an inflation adjusted amount of $115,055,000 (rounded to the nearest thousand dollars).

III. Fees for FY 2014

Under the FD&C Act, all submission fees and the periodic reporting fee are set as a percent of the standard (full) fee for a premarket application (see 21 U.S.C. 379j(a)(2)(A).) For FY 2014, the base fee will be adjusted as specified in the FD&C Act for inflation (see 21 U.S.C. 379j(b) and (c)). Table 3 provides the last 3 years of fee paying submission counts. These numbers are used to project the fee paying submission that FDA will receive in FY 2014. The fee paying submission counts are published in the Agency's MDUFA Financial Report to Congress each year.

TABLE 3—3-YEAR AVERAGE OF FEE PAYING SUBMISSIONS

Application type	FY 2010 actual	FY 2011 actual	FY 2012 actual	3-Year average
Full Fee Applications	32	24	25	27
Small Business	8	7	6	7
Panel Track Supplement	11	7	12	10
Small Business	2	1	0	1
180-Day Supplements	103	92	145	113
Small Business	20	15	21	19
Real-Time Supplements	146	145	196	162
Small Business	20	17	22	20
510(k)s	2,367	2,398	2,865	2,543
Small Business	1,032	938	1,086	1,019
30-Day Notice	669	755	801	742
Small Business	78	67	60	68
513(g) Request for Classification Information	56	40	46	47
Small Business	25	35	30	30
Annual Fee for Periodic Reporting	427	466	478	457
Small Business	78	*78*	39	65

TABLE 3—3-YEAR AVERAGE OF FEE PAYING SUBMISSIONS—Continued

Application type	FY 2010 actual	FY 2011 actual	FY 2012 actual	3-Year average
Establishment Registration [1] *	.....	.....	.....	22,500

[1] Estimate for establishment registration based on preliminary FY 2013 numbers because the criteria for this fee changed beginning in FY 2013.

The information in Table 3 is necessary to estimate the amount of revenue that will be collected based on the fee amounts. Table 4 displays both the estimated revenue using the FY 2014 base fees set in statute and the estimated revenue adding the inflation adjustment to the FY 2014 base fees. The increases to the base fees are needed in order to collect the new revenue target of $115,055,000.

TABLE 4—FEES NEEDED TO ACHIEVE NEW FY 2014 REVENUE TARGET

Application type	FY 2014 base fees	Estimated revenue	Adjusted FY 2014 fees (standard fee)	Adjusted revenue
Full Fee Applications	$252,960	$6,829,920	$258,520	$6,980,040
Small Business	63,240	442,680	64,630	452,410
Panel-Track Supplement	189,720	1,897,200	193,890	1,938,900
Small Business	47,430	47,430	48,473	48,473
180-Day Supplements	37,944	4,287,672	38,778	4,381,914
Small Business	9,486	180,234	9,695	184,205
Real-Time Supplements	17,707	2,868,566	18,096	2,931,552
Small Business	4,427	88,536	4,524	90,480
510(k)s	5,059	12,865,546	5,170	13,147,310
Small Business	2,530	2,577,662	2,585	2,634,115
30-Day Notice	4,047	3,003,141	4,136	3,068,912
Small Business	2,024	137,610	2,068	140,624
513(g) Request for Classification Information	3,415	160,503	3,490	164,030
Small Business	1,707	51,224	1,745	52,350
Annual Fee for Periodic Reporting	8,854	4,046,095	9,048	4,134,936
Small Business	2,213	143,871	2,262	147,030
Establishment Registration	3,200	72,000,000	3,313	74,542,500
Total	.....	111,627,891	.....	115,039,781

The PMA and establishment registration fees were increased over the base by the inflation adjustment (2.198%) as determined earlier in this document. An additional $43 (rounded to the nearest whole dollar) was added to the establishment registration fee in order to collect the shortfall in revenue that resulted. This was done because the statute directs that, after the inflation adjustment is made, the base establishment registration fee amounts shall be further adjusted, as necessary, for total fee collections to achieve the total revenue amount specified after inflation adjustment (see 21 U.S.C. 379j(c)(3)). Without this additional adjustment to the establishment registration fee, the total collections would fall almost $1 million below the total specified revenue after adjustment for inflation.

The standard fee (adjusted base amount) for a premarket application, including a BLA, and for a premarket report and a BLA efficacy supplement, is $258,520 for FY 2014. The fees set by reference to the standard fee for a premarket application are:

- For a panel-track supplement, 75 percent of the standard fee;
- For a 180-day supplement, 15 percent of the standard fee;
- For a real-time supplement, 7 percent of the standard fee;
- For a 30-day notice, 1.6 percent of the standard fee;
- For a 510(k) premarket notification, 2 percent of the standard fee;
- For a 513(g) request for classification information, 1.35 percent of the standard fee; and
- For an annual fee for periodic reporting concerning a class III device, 3.5 percent of the standard fee.

For all submissions other than a 510(k) premarket notification, a 30-day notice, and a 513(g) request for classification information, the small business fee is 25 percent of the standard (full) fee for the submission. (See 21 U.S.C. 379j(d)(2)(C).) For a 510(k) premarket notification submission, a 30-day notice, and a 513(g) request for classification information, the small business fee is 50 percent of the standard (full) fee for the submission. (See 21 U.S.C. 379j(d)(2)(C) and (e)(2)(C).)

The annual fee for establishment registration, after adjustment, is set at $3,313 for FY 2014. There is no small business rate for the annual establishment registration fee; all establishments pay the same fee.

Table 5 sets out the FY 2014 rates for all medical device fees.

TABLE 5—MEDICAL DEVICE FEES FOR FY 2014

	Standard fee (as a percent of the standard fee for a premarket application)	FY 2014 Standard fee	FY 2014 Small Business fee
Application Fee Type:			

TABLE 5—MEDICAL DEVICE FEES FOR FY 2014—Continued

	Standard fee (as a percent of the standard fee for a premarket application)	FY 2014 Standard fee	FY 2014 Small Business fee
Premarket application (a PMA submitted under section 515(c)(1) of the FD&C Act (21 U.S.C. 360e(c)(1)), a PDP submitted under section 515(f) of the FD&C Act (21 U.S.C. 360e(f)), or a BLA submitted under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262)).	Base Fee Adjusted as Specified in the Statute	$258,520	$64,630
Premarket report (submitted under section 515(c)(2) of the FD&C Act).	100%	258,520	64,630
Efficacy supplement (to an approved BLA under section 351 of the PHS Act).	100%	258,520	64,630
Panel-track supplement	75%	193,890	48,473
180-day supplement	15%	38,778	9,695
Real-time supplement	7%	18,096	4,524
510(k) premarket notification submission	2%	5,170	2,585
30-day notice	1.6%	4,136	2,068
513(g) (21 U.S.C. 360c(g)) request for classification information.	1.35%	3,490	1,745
Annual Fee Type:			
Annual fee for periodic reporting on a class III device.	3.5%	9,048	2,262
Annual establishment registration fee (to be paid by the establishment engaged in the manufacture, preparation, propagation, compounding, or processing of a device, as defined by 21 U.S.C. 379i(13)).	Base Fee Adjusted as Specified in the Statute	3,313	3,313

IV. How To Qualify as a Small Business for Purposes of Medical Device Fees

If your business has gross receipts or sales of no more than $100 million for the most recent tax year, you may qualify for reduced small business fees. If your business has gross sales or receipts of no more than $30 million, you may also qualify for a waiver of the fee for your first premarket application (PMA, PDP, or BLA) or premarket report. You must include the gross receipts or sales of all of your affiliates along with your own gross receipts or sales when determining whether you meet the $100 million or $30 million threshold. If you want to pay the small business fee rate for a submission, or you want to receive a waiver of the fee for your first premarket application or premarket report, you should submit the materials showing you qualify as a small business 60 days before you send your submission to FDA. If you make a submission before FDA finds that you qualify as a small business, you must pay the standard (full) fee for that submission.

If your business qualified as a small business for FY 2013, your status as a small business will expire at the close of business on September 30, 2013. You must re-qualify for FY 2014 in order to pay small business fees during FY 2014.

If you are a domestic (U.S.) business, and wish to qualify as a small business for FY 2014, you must submit the following to FDA:

1. A completed FY 2014 MDUFA Small Business Qualification Certification (Form FDA 3602). This form is provided in FDA's guidance document, ''FY 2014 Medical Device User Fee Small Business Qualification and Certification,'' available on FDA's Web site at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Overview/MedicalDeviceUserFeeandModernizationActMDUFMA/default.htm.* This form is not available separate from the guidance document.

2. A certified copy of your Federal (U.S.) Income Tax Return for the most recent tax year. The most recent tax year will be 2013, except:

If you submit your FY 2014 MDUFA Small Business Qualification before April 15, 2014, and you have not yet filed your return for 2013, you may use tax year 2012.

If you submit your FY 2014 MDUFA Small Business Qualification on or after April 15, 2014, and have not yet filed your 2013 return because you obtained an extension, you may submit your most recent return filed prior to the extension.

3. For each of your affiliates, either:

- If the affiliate is a domestic (U.S.) business, a certified copy of the affiliate's Federal (U.S.) Income Tax Return for the most recent tax year, or
- If the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing Authority Certification completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates of the gross receipts or sales collected. The applicant must also submit a statement signed by the head of the applicant's firm or by its chief financial officer that the applicant has submitted certifications for all of its affiliates, identifying the name of each affiliate, or that the applicant has no affiliates.

If you are a foreign business, and wish to qualify as a small business for FY 2014, you must submit the following:

1. A completed FY 2014 MDUFA Foreign Small Business Qualification Certification (Form FDA 3602A). This form is provided in FDA's guidance document, ''FY 2014 Medical Device User Fee Small Business Qualification and Certification,'' available on FDA's Internet site at *http://www.fda.gov/mdufa.* This form is not available separate from the guidance document.

2. A National Taxing Authority Certification, completed by, and bearing the official seal of, the National Taxing

Authority of the country in which the firm is headquartered. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates of the gross receipts or sales collected.

3. For each of your affiliates, either:

• If the affiliate is a domestic (U.S.) business, a certified copy of the affiliate's Federal (U.S.) Income Tax Return for the most recent tax year (2013 or later), or

• If the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing Authority Certification completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates for the gross receipts or sales collected. The applicant must also submit a statement signed by the head of the applicant's firm or by its chief financial officer that the applicant has submitted certifications for all of its affiliates, identifying the name of each affiliate, or that the applicant has no affiliates.

V. Procedures for Paying Application Fees

If your application or submission is subject to a fee and your payment is received by FDA from October 1, 2013, through September 30, 2014, you must pay the fee in effect for FY 2014. The later of the date that the application is received in the reviewing center's document room or the date the U.S. Treasury recognizes the payment determines whether the fee rates for FY 2013 or FY 2014 apply. FDA must receive the correct fee at the time that an application is submitted, or the application will not be accepted for filing or review.

FDA requests that you follow the steps below before submitting a medical device application subject to a fee to ensure that FDA links the fee with the correct application. (**Note:** In no case should the check for the fee be submitted to FDA with the application.)

A. Step One—Secure a Payment Identification Number (PIN) and Medical Device User Fee Cover Sheet From FDA Before Submitting Either the Application or the Payment

Log on to the MDUFA Web site at: *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Overview/MedicalDeviceUserFeeandModernizationActMDUFMA/default.htm* and click on ''MDUFA FORMS'' at the left side of the page, and then under the MDUFA Forms heading, click on the link ''Create MDUFA User Fee Cover Sheet.'' Complete the Medical Device User Fee cover sheet. Be sure you choose the correct application submission date range. (Two choices will be offered until October 1, 2013. One choice is for applications and fees that will be received on or before September 30, 2013, which are subject to FY 2013 fee rates. A second choice is for applications and fees received on or after October 1, 2013, which are subject to FY 2014 fee rates.) After completing data entry, print a copy of the Medical Device User Fee cover sheet and note the unique PIN located in the upper right-hand corner of the printed cover sheet.

B. Step Two—Electronically Transmit a Copy of the Printed Cover Sheet With the PIN to FDA's Office of Financial Management

Once you are satisfied that the data on the cover sheet is accurate, electronically transmit that data to FDA according to instructions on the screen. Because electronic transmission is possible, applicants are required to set up a user account and use passwords to assure data security in the creation and electronic submission of cover sheets.

C. Step Three—Submit Payment for the Completed Medical Device User Fee Cover Sheet as Described in This Section, Depending on the Method You Will Use To Make Payment

1. If paying with a paper check:

• All paper checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. (FDA's tax identification number is 53–0196965, should your accounting department need this information.)

• Please write your application's unique PIN, from the upper right-hand corner of your completed Medical Device User Fee cover sheet, on your check.

• Mail the paper check and a copy of the completed cover sheet to: Food and Drug Administration, P.O. Box 956733, St. Louis, MO 63195–6733. (Please note that this address is for payments of application and annual report fees only and is not to be used for payment of annual establishment registration fees.)

If you prefer to send a check by a courier (such as FedEx, DHL, United Parcel Service (UPS), etc.), the courier may deliver the check to: U.S. Bank, Attn: Government Lockbox 956733, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This address is for courier delivery only. Contact the U.S. Bank at 314–418–4013 if you have any questions concerning courier delivery.)

FDA records the official application receipt date as the later of the following: (1) The date the application was received by FDA or (2) the date the U.S. Treasury recognizes the payment. It is helpful if the fee arrives at the bank at least 1 day before the application arrives at FDA.

2. If paying with credit card or electronic check (Automated Clearing House (ACH)):

FDA has partnered with the U.S. Department of the Treasury to utilize Pay.gov, a Web-based payment system, for online electronic payment. You may make a payment via electronic check or credit card after submitting your cover sheet. To pay online, select the ''Pay Now'' button. Credit card transactions for cover sheets are limited to $49,999.99.

3. If paying with a wire transfer:

• Please include your application's unique PIN, from the upper right-hand corner of your completed Medical Device User Fee cover sheet, in your wire transfer. Without the PIN your payment may not be applied to your cover sheet and review of your application may be delayed.

• The originating financial institution may charge a wire transfer fee. Please ask your financial institution about the fee and add it to your payment to ensure that your cover sheet is fully paid.

Use the following account information when sending a wire transfer: New York Federal Reserve Bank, U.S. Department of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 1350 Piccard Dr., Rockville, MD 20850.

D. Step Four—Submit Your Application to FDA With a Copy of the Completed Medical Device User Fee Cover Sheet

Please submit your application and a copy of the completed Medical Device User Fee cover sheet to one of the following addresses:

1. Medical device applications should be submitted to: Food and Drug Administration, Center for Devices and

Radiological Health, Document Mail Center, Bldg. 66, Rm. 0609, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002.

2. Biologic applications should be sent to: Food and Drug Administration, Center for Biologics Evaluation and Research, Document Control Center (HFM–99), Suite 200N, 1401 Rockville Pike, Rockville, MD 20852–1448.

VI. Procedures for Paying the Annual Fee for Periodic Reporting

As of FY 2011, you are no longer able to create a cover sheet and obtain a PIN to pay the MDUFA Annual Fee for Periodic Reporting. Instead, you will be invoiced at the end of the quarter in which your PMA Periodic Report is due. Invoices will be sent based on the details included on your PMA file; you are responsible to ensure your billing information is kept up-to-date (you can update your contact for the PMA by submitting an amendment).

1. If paying with a paper check:

All paper checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. (FDA's tax identification number is 53–0196965, should your accounting department need this information.)

- Please write your invoice number on the check.
- Mail the paper check and a copy of invoice to: Food and Drug Administration, P.O. Box 956733, St. Louis, MO 63195–6733.

(Please note that this address is for payments of application and annual report fees only and is not to be used for payment of annual establishment registration fees.)

If you prefer to send a check by a courier (such as FedEx, DHL, UPS, etc.), the courier may deliver the check to: U.S. Bank, Attn: Government Lockbox 956733, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This address is for courier delivery only. Contact the U.S. Bank at 314–418–4013 if you have any questions concerning courier delivery.)

2. If paying with a wire transfer:

- Please include your invoice number in your wire transfer. Without the invoice number, your payment may not be applied and you may be referred to collections.
- The originating financial institution may charge a wire transfer fee. Please ask your financial institution about the fee and add it to your payment to ensure that your invoice is fully paid.

Use the following account information when sending a wire transfer: New York Federal Reserve Bank, U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 1350 Piccard Dr., Rockville, MD 20850.

VII. Procedures for Paying Annual Establishment Fees

In order to pay the annual establishment fee, firms must access the Device Facility User Fee (DFUF) Web site at *https://fdasfinapp8.fda.gov/OA_HTML/fdaCAcdLogin.jsp.* (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.) You will create a DFUF order and you will be issued a PIN once you place your order. After payment has been processed, you will be issued a payment confirmation number (PCN). You will not be able to register your establishment if you do not have a PIN and a PCN. An establishment required to pay an annual establishment registration fee is not legally registered in FY 2014 until it has completed the steps below to register and pay any applicable fee. (See 21 U.S.C. 379j(g)(2).)

Companies that do not manufacture any product other than a licensed biologic are required to register in the Blood Establishment Registration (BER) system. FDA's Center for Biologics Evaluation and Research (CBER) will send establishment registration fee invoices annually to these companies.

A. Step One—Submit a DFUF Order With a PIN From FDA Before Registering or Submitting Payment

To submit a DFUF Order, you must create or have previously created a user account and password for the user fee Web site listed previously in this section. After creating a user name and password, log into the Establishment Registration User Fee FY 2014 store. Complete the DFUF order by entering the number of establishments you are registering that require payment. Once you are satisfied that the data on the order are accurate, electronically transmit that data to FDA according to instructions on the screen. Print a copy of the final DFUF order and note the unique PIN located in the upper right-hand corner of the printed order.

B. Step Two—Pay for Your DFUF Order

Unless paying by credit card, all payments must be in U. S. currency and drawn on a U.S. bank.

1. If paying by credit card or electronic check (ACH):

The DFUF order will include payment information, including details on how you can pay online using a credit card or electronic check. Follow the instructions provided to make an electronic payment.

2. If paying with a paper check:

If you prefer not to pay online, you may pay by a check, in U.S. dollars and drawn on a U.S. bank, mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. (**Note:** This address is different from the address for payments of application and annual report fees and is to be used only for payment of annual establishment registration fees.)

If a check is sent by a courier that requests a street address, the courier can deliver the check to: U.S. Bank, Attn: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only; do not send mail to this address.)

Please make sure that both of the following are written on your check: (1) The FDA post office box number (P.O. Box 979108) and (2) the PIN that is printed on your order. A copy of your printed order should also be mailed along with your check. FDA's tax identification number is 53–0196965.

3. If paying with a wire transfer:

Wire transfers may also be used to pay annual establishment fees. To send a wire transfer, please read and comply with the following information:

Include your order's unique PIN, from the upper right-hand corner of your completed DFUF order, in your wire transfer. Without the PIN your payment may not be applied to your facility and your registration will be delayed.

The originating financial institution may charge a wire transfer fee. Please ask your financial institution about the fee and add it to your payment to ensure that your order is fully paid. Use the following account information when sending a wire transfer: New York Federal Reserve Bank, U.S. Dept of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 1350 Piccard Dr., Rockville, MD 20850.

C. Step Three—Complete the Information Online To Update Your Establishment's Annual Registration for FY 2014, or To Register a New Establishment for FY 2014

Go to the Center for Devices and Radiological Health's Web site at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/HowtoMarketYourDevice/RegistrationandListing/default.htm* and click the ''Access Electronic Registration'' link on the left of the page. This opens up a new

page with important information about the FDA Unified Registration and Listing System (FURLS). After reading this information, click on the link (Access Electronic Registration) at the bottom of the page. This link takes you to an FDA Industry Systems page with tutorials that demonstrate how to create a new FURLS user account if your establishment did not create an account in FY 2013. Manufacturers of licensed biologics should register in the BER system at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/EstablishmentRegistration/BloodEstablishmentRegistration/default.htm.*

Enter your existing account ID and password to log into FURLS. From the FURLS/FDA Industry Systems menu, click on the Device Registration and Listing Module (DRLM) of FURLS button. New establishments will need to register and existing establishments will update their annual registration using choices on the DRLM menu. Once you choose to register or update your annual registration, the system will prompt you through the entry of information about your establishment and your devices. If you have any problems with this process, email: *reglist@cdrh.fda.gov* or call 301–796–7400 for assistance. (Note: this email address and this telephone number are for assistance with establishment registration only, and not for any other aspects of medical device user fees.) Problems with BERS should be directed to *bloodregis@fda.hhs.gov* or call 301–827–3546.

D. Step Four—Enter Your DFUF Order PIN and PCN

After completing your annual or initial registration and device listing, you will be prompted to enter your DFUF order PIN and PCN, when applicable. This process does not apply to establishments engaged only in the manufacture, preparation, propagation, compounding, or processing of licensed biologic devices. CBER will send invoices for payment of the establishment registration fee to such establishments.

Dated: July 29, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–18623 Filed 8–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pulmonary-Allergy Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 10, 2013, from 8 a.m. to 4:30 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Stephanie Begansky, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: PADAC@fda.hhs.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On September 10, 2013, the committee will discuss the new molecular entity new drug application (NDA) 203975, for umeclidinium and vilanterol powder for inhalation (proposed trade name Anoro Ellipta), sponsored by Glaxo Group (d/b/a/GSK) for the long-term, once-daily, maintenance treatment of airflow obstruction in patients with chronic obstructive pulmonary disease, including chronic bronchitis and emphysema.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 26, 2013. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 16, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 19, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Stephanie Begansky at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 29, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–18633 Filed 8–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 19, 2013, from 8 a.m. to 6 p.m.

Location: Hilton Washington, DC North/Gaithersburg, salons A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel telephone number is 301–977–8900.

Contact Person: Natasha Facey, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1544, Silver Spring, MD 20933, 301–796–5920, *Natasha.Facey@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On September 19, 2013, the committee will discuss, make recommendations, and vote on information regarding the premarket approval application for the ReSure Sealant sponsored by Ocular Therapeutix, Inc. The ReSure Sealant is an in situ formed hydrogel that is applied topically to clear corneal incisions to create an adherent temporary, soft and lubricious sealant. The ReSure Sealant proposed indication for use is the intraoperative management of clear corneal incisions with a wound leak demonstrated by Seidel test, and for prevention of postoperative fluid egress following cataract or intraocular lens placement surgery.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 13, 2013. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 5, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 9, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams at *Annmarie.Williams@fda.hhs.gov* or 301–796–5966, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 29, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–18636 Filed 8–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0007]

Generic Drug User Fee—Abbreviated New Drug Application, Prior Approval Supplement, Drug Master File, Final Dosage Form Facility, and Active Pharmaceutical Ingredient Facility Fee Rates for Fiscal Year 2014

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rate for the abbreviated new drug application (ANDA), prior approval supplement to an approved ANDA (PAS), drug master file (DMF), generic drug active pharmaceutical ingredient (API), and finished dosage form (FDF) facilities user fees related to the Generic Drug User Fee Program for fiscal year (FY) 2014. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Generic Drug User Fee Amendments of 2012 (GDUFA), as

further amended by the FDA User Fee Correction Act of 2012, authorizes FDA to assess and collect user fees for certain applications and supplements for human generic drug products, on applications in the backlog as of October 1, 2012 (only applicable to FY 2013), on FDF and API facilities, and on type II active pharmaceutical ingredient DMFs to be made available for reference. GDUFA directs FDA to establish each year the Generic Drug User Fee rates for the upcoming year, and publish those rates in the **Federal Register** 60 days before the start of the upcoming FY. This document establishes FY 2014 rates for an ANDA ($63,860), PAS ($31,930), DMF ($31,460), domestic API facility ($34,515), foreign API facility ($49,515), domestic FDF facility ($220,152), and foreign FDF facility ($235,152). These fees are effective on October 1, 2013, and will remain in effect through September 30, 2014.

FOR FURTHER INFORMATION CONTACT: David Miller, Office of Financial Management (HFA–100), Food and Drug Administration, 1350 Piccard Dr., PI50, Rm. 210J, Rockville, MD 20850, 301–796–7103.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 744A and 744B of the FD&C Act (21 U.S.C. 379j-41 and 379j–42) establish fees associated with human generic drug products. Fees are assessed on: (1) Certain applications in the backlog as of October 1, 2012 (only applicable to FY 2013); (2) certain types of applications and supplements for human generic drug products; (3) certain facilities where APIs and FDFs are produced; and (4) certain DMFs associated with human generic drug products (section 744B(a) of the FD&C Act).

II. Fee Revenue Amount for FY 2014

The base revenue amount for FY 2014 is $299,000,000, as set in the statute prior to the inflation adjustment. GDUFA directs FDA to use the yearly revenue amount as a starting point to set the fee rates for each fee type. For more information about GDUFA, please refer to the FDA Web site (*http://www.fda.gov/gdufa*). The ANDA, PAS, DMF, API facility, and FDF facility fee calculations for FY 2014 are described in this document.

Inflation Adjustment

GDUFA specifies that the $299,000,000 is to be further adjusted for inflation increases for FY 2014 using two separate adjustments—one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (see section 744B(c)(1) of the FD&C Act).

The component of the inflation adjustment for PC&B costs shall be one plus the average annual percent change in the cost of all PC&B paid per full-time equivalent position (FTE) at FDA for the first 3 of the 4 preceding FYs, multiplied by the proportion of PC&B costs to total FDA costs of the review of human generic drug activities for the first 3 of the preceding 4 FYs (see section 744B(c)(1)(B) of the FD&C Act). The data on total PC&B paid and numbers of FTE paid, from which the average cost per FTE can be derived, are published in FDA's Justification of Estimates for Appropriations Committees.

Table 1 of this document summarizes the actual cost and total FTE for the specified FYs, and provides the percent change from the previous FY and the average percent change over the first 3 of the 4 FYs preceding FY 2014. The 3-year average is 2.05 percent.

TABLE 1—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGE

Fiscal year	2010	2011	2012	3-Year average
Total PC&B	$1,634,108,000	$1,761,655,000	$1,824,703,000	.....
Total FTE	12,526	13,331	13,382	.....
PC&B per FTE	$130,457	$132,147	$136,355	.....
% Change from Previous Year	1.67%	1.30%	3.18%	2.05%

The statute specifies that this 2.05 percent should be multiplied by the proportion of PC&B expended for the review of human generic drug activities. Since the first year of the Generic Drug User Fee Program has not been completed and those costs are not yet available, costs for the entire Agency will be used. Table 2 of this document shows the total amount of expenditures made by FDA broken down by PC&B and Non-PC&B for FYs 2010, 2011, and 2012.

TABLE 2—PC&B AND NON-PC&B AS A PERCENT OF TOTAL EXPENDITURES BY FDA OVER THE LAST 3 YEARS

Fiscal year	2010	2011	2012	3-Year average
PC&B	$1,634,108,000	$1,761,655,000	$1,824,703,000	.....
Non-PC&B	$1,536,502,000	$1,571,752,000	$1,725,793,000	.....
Total Costs	$3,170,610,000	$3,333,407,000	$3,550,496,000	.....
PC&B percent	52%	53%	51%	52%
Non-PC&B percent	48%	47%	49%	48%

The payroll adjustment is 2.05 percent multiplied by 52 percent (or 1.066 percent).

The statute specifies that the portion of the inflation adjustment for non-PC&B costs for FY 2014 is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC–MD–VA–WV; not seasonally adjusted; all items; annual index) for the first 3 of the preceding 4 years of available data multiplied by the proportion of all costs of the process for the review of human generic drug activities other than PC&B (see section 744B(c)(1)(C) of the FD&C Act). Table 3 of this document provides the summary data for the percent change in the specified CPI for the Baltimore-Washington area. The data are published by the Bureau of Labor Statistics and can be found on their Web site at *http://data.bls.gov/cgi-bin/*

surveymost?cu by checking the box marked ''Washington-Baltimore All Items, November 1996 = 100 − CUURA311SAO'' and then clicking on the ''Retrieve Data'' button.

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN BALTIMORE-WASHINGTON AREA CPI

Year	2010	2011	2012	3-Year average
Annual CPI	142.218	146.975	150.212	
Annual Percent Change	1.72%	3.34%	2.20%	2.42%

To calculate the inflation adjustment for non-pay costs, we multiply the 2.42 percent by the proportion of costs FDA obligated for costs other than PC&B. Since 52 percent was obligated for PC&B as shown in table 2 of this document, 48 percent is the portion of costs other than PC&B. The non-pay adjustment is 2.42 percent times 48 percent, or 1.161 percent.

To complete the inflation adjustment, we add the PC&B component (1.066 percent) to the non-PC&B component (1.161 percent) for a total inflation adjustment of 2.227 percent (rounded), and then add one, making 1.02227. We then multiply the base revenue amount for FY 2014 ($299,000,000) by 1.02227, yielding an inflation adjusted amount of $305,659,000 (rounded to the nearest thousand dollars).

III. ANDA and PAS Fees

Under GDUFA, the FY 2014 ANDA and PAS fees are owed by each applicant that submits an ANDA or a PAS, on or after October 1, 2013. These fees are due on the receipt date of the ANDA or PAS. Section 744B(b)(2)(B) specifies that the ANDA and PAS fees will make up 24 percent of the $305,659,000, which is $73,358,000 (rounded to the nearest thousand dollars).

In order to calculate the ANDA fee, FDA estimated the number of full application equivalents (FAEs) that will be submitted in FY 2014. This is done by estimating the number of ANDAs and PASs that will incur the fee in FY 2014 and converting them into FAEs. Applications count as one FAE and supplements count as one-half an FAE since the fee for a PAS is one half of the fee for an ANDA. However, GDUFA requires that 75 percent of the fees paid for an ANDA or PAS filing fee be refunded if its receipt is refused due to issues other than failure to pay fees (section 744B(a)(3)(D) of the FD&C Act). Therefore, an ANDA or PAS that is considered not to have been received by the Secretary due to reasons other than failure to pay fees counts as one-fourth of an FAE if the applicant initially paid a full application fee, or one-eighth of an FAE if the applicant paid the supplement fee (one half of the full application fee amount).

It was determined that approximately 911 ANDAs will incur an ANDA filing fee in FY 2014. This number is based on available data from the first 8 months of FY 2013 and estimating the last 4 months based on the current trend. In contrast to previous non-fee paying FYs, the first year of GDUFA implementation saw a significant increase in Changes Being Effected (CBE) submissions and a significant decrease in PAS submissions. Due to the trend of FY 2013 submissions, FDA utilized available FY 2013 data to estimate the number of such supplement submissions for FY 2014. The estimated number of PASs to be received in FY 2014 is 480, based on an annualized estimate of the number of receipts for FY 2013.

After taking into account estimates of the number of ANDAs and PASs that are likely to be refused due to issues other than failure to pay fees, and the number that are likely to be resubmitted in the same fiscal year, FDA estimates that the total number of fee-paying FAEs that will be received in FY 2014 is 1,148.8.

The FY 2014 application fee is estimated by dividing the number of full application equivalents that will pay the fee in FY 2014 (1,148.8) into the fee revenue amount to be derived from application fees in FY 2014 ($73,358,000). The result, rounded to the nearest $10, is a fee of $63,860 per ANDA. Section 744B(b)(2)(B) of the FD&C Act states that the PAS fee is equal to half the ANDA fee; therefore the PAS fee is $31,930.

We note that the statute provides that those ANDAs that include information about the production of active pharmaceutical ingredients other than by reference to a DMF will pay an additional fee that is based on the number of such active pharmaceutical ingredients and the number of facilities proposed to produce those ingredients. (See section 744B(a)(3)(F) of the FD&C Act.) FDA considers that this additional fee is unlikely to be assessed often; therefore, FDA has not included projections concerning the amount of this fee in calculating the fees for ANDAs and PASs.

IV. DMF Fee

Under GDUFA, the DMF fee is owed by each person that owns a type II active pharmaceutical ingredient DMF that is referenced, on or after October 1, 2012, in a generic drug submission by an initial letter of authorization. This is a one-time fee for each individual DMF. This fee is due no later than the date on which the first generic drug submission is submitted that references the associated DMF. Under section 744B(a)(2)(D)(iii) of the FD&C Act, if a DMF has successfully undergone an initial completeness assessment and the fee is paid, the DMF will be placed on a publicly available list documenting DMFs available for reference. Thus, some DMF holders may choose to pay the fee prior to the date that it would otherwise be due in order to have the DMF placed on that list.

In order to calculate the DMF fee, FDA assessed the volume of DMF submissions over time. The statistical forecasting methodology of power regression analysis was selected because this model showed a very good fit to the distribution of DMF submissions over time. Based on the 8 months of available data representing the total paid DMFs from FY 2013 and projecting a 5-year timeline (October 2013 to October 2017), FDA is estimating 583 fee-paying DMFs for FY 2014.

The FY 2014 DMF fee is determined by dividing the DMF revenue by the estimated number of fee-paying DMFs in FY 2014. Section 744B(b)(2)(A) specifies that the DMF fees will make up 6 percent of the $305,659,000, which is $18,340,000 (rounded to the nearest thousand dollars). Dividing the DMF revenue amount ($18,340,000) by the estimated fee-paying DMFs (583), and rounding to the nearest $10, yields a DMF fee of $31,460 for FY 2014.

V. Foreign Facility Fee Differential

Under GDUFA, the fee for a facility located outside the United States and its territories and possessions shall be not less than $15,000 and not more than $30,000 higher than the amount of the

fee for a facility located in the United States and its territories and possessions, as determined by the Secretary. The basis for this differential is the extra cost incurred by conducting an inspection outside the United States and its territories and possessions. For FY 2014 FDA has determined that the differential for foreign facilities will be $15,000. The differential may be adjusted in future years.

VI. FDF Facility Fee

Under GDUFA, the annual FDF facility fee is owed by each person that owns a facility which is identified, or intended to be identified, in at least one generic drug submission that is pending or approved to produce one or more finished dosage forms of a human generic drug or an active pharmaceutical ingredient used in a human generic drug. These fees are due no later than the first business day on or after October 1 of each such year. Section 744B(b)(2)(C) of the FD&C Act specifies that the FDF facility fee revenue will make up 56 percent of $305,659,000, which is $171,169,000 (rounded to the nearest thousand dollars).

In order to calculate the FDF fee, FDA has used the data submitted by generic drug facilities through the self-identification process mandated in the GDUFA statute and specified in a Notice of Requirement published on October 2, 2012. The total number of FDF facilities identified through self-identification was 748. Of the total facilities identified as FDF, there were 315 domestic facilities and 433 foreign facilities. The foreign facility differential is $15,000. In order to calculate the fee for domestic facilities, we must first subtract the fee revenue that will result from the foreign facility fee differential. We take the foreign facility differential ($15,000) and multiply it by the number of foreign facilities (433) to determine the total fees that will result from the foreign facility differential. As a result of that calculation the foreign fee differential will make up $6,495,000 of the total FDF fee revenue. Subtracting the foreign facility differential fee revenue ($6,495,000) from the total FDF facility target revenue ($171,169,000) results in a remaining fee revenue balance of $164,674,000. To determine the domestic FDF facility fee, we divide the $164,674,000 by the total number of facilities (748) which gives us a domestic FDF facility fee of $220,152. The foreign FDF facility fee is $15,000 more than the domestic FDF facility fee, or $235,152.

VII. API Facility Fee

Under GDUFA, the annual API facility fee is owed by each person that owns a facility which produces, or which is pending review to produce, one or more active pharmaceutical ingredients identified, or intended to be identified, in at least one generic drug submission that is pending or approved or in a Type II active pharmaceutical ingredient drug master file referenced in such generic drug submission. These fees are due no later than the first business day on or after October 1 of each such year. Section 744B(b)(2)(D) of the FD&C Act specifies that the API facility fee will make up 14 percent of $305,659,000 in fee revenue, which is $42,792,000 (rounded to the nearest thousand dollars).

In order to calculate the API fee, FDA has used the data submitted by generic drug facilities through the self-identification process. The total number of API facilities identified through self-identification was 903. Of the total facilities identified as API, there were 128 domestic facilities and 775 foreign facilities. The foreign facility differential is $15,000. In order to calculate the fee for domestic facilities, we must first subtract the fee revenue that will result from the foreign facility fee differential. We take the foreign facility differential ($15,000) and multiply it by the number of foreign facilities (775) to determine the total fees that will result from the foreign facility differential. As a result of that calculation the foreign fee differential will make up $11,625,000 of the total API fee revenue. Subtracting the foreign facility differential fee revenue ($11,625,000) from the total API facility target revenue ($42,792,000) results in a remaining balance of $31,167,000. To determine the domestic API facility fee, we divide the $31,167,000 by the total number of facilities (903) which gives us a domestic API facility fee of $34,515. The foreign API facility fee is $15,000 more than the domestic API facility fee, or $49,515.

VIII. Fee Payment Options and Procedures

The new fee rates are effective October 1, 2013. To pay the ANDA, PAS, DMF, API facility, and FDF facility fee, you must complete a Generic Drug User Fee cover sheet, available at *http://www.fda.gov/gdufa*, and generate a user fee identification (ID) number. Payment must be made in U.S. currency drawn on a U.S. bank by electronic check, check, bank draft, U.S. postal money order, or wire transfer.

FDA has partnered with the U.S. Department of the Treasury to utilize Pay.gov, a Web-based payment application, for online electronic payment. The Pay.gov feature is available on the FDA Web site after completing the generic drug user fee cover sheet and generating the user fee ID number.

Please include the user fee ID number on your check, bank draft, or postal money order and make payable to the order of the Food and Drug Administration. Your payment can be mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. If checks are to be sent by a courier that requests a street address, the courier can deliver checks to: U.S. Bank, Attention: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only.) Please make sure that the FDA post office box number (P.O. Box 979108) is written on the check, bank draft, or postal money order.

If paying by wire transfer, please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. Please ask your financial institution about the fee and include it with your payment to ensure that your fee is fully paid. The account information is as follows: New York Federal Reserve Bank, U.S. Department of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, account number: 75060099, routing number: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 1350 Piccard Dr., Rockville, MD 20850. The tax identification number of FDA is 53–0196965.

Dated: July 29, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0007]

Prescription Drug User Fee Rates for Fiscal Year 2014

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for

fiscal year (FY) 2014. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Prescription Drug User Fee Amendments of 2012, which was signed by the President on July 9, 2012 (PDUFA V), authorizes FDA to collect user fees for certain applications for approval of drug and biological products, on establishments where the products are made, and on such products. Base revenue amounts to be generated from PDUFA fees were established by PDUFA V, with provisions for certain adjustments. Fee revenue amounts for applications, establishments, and products are to be established each year by FDA so that one-third of the PDUFA fee revenues FDA collects each year will be generated from each of these categories. This document establishes fee rates for FY 2014 for application fees for an application requiring clinical data ($2,169,100), for an application not requiring clinical data or a supplement requiring clinical data ($1,084,550), for establishment fees ($554,600), and for product fees ($104,060). These fees are effective on October 1, 2013, and will remain in effect through September 30, 2014. For applications and supplements that are submitted on or after October 1, 2013, the new fee schedule must be used. Invoices for establishment and product fees for FY 2014 will be issued in August 2013 using the new fee schedule.

FOR FURTHER INFORMATION CONTACT: David Miller, Office of Financial Management (HFA–100), Food and Drug Administration, 1350 Piccard Dr., PI50, Rm. 210J, Rockville, MD 20850, 301–796–7103.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 735 and 736 of the FD&C Act (21 U.S.C. 379g and 379h, respectively) establish three different kinds of user fees. Fees are assessed on the following: (1) Certain types of applications and supplements for approval of drug and biological products; (2) certain establishments where such products are made; and (3) certain products (section 736(a) of the FD&C Act). When certain conditions are met, FDA may waive or reduce fees (section 736(d) of the FD&C Act).

For FY 2013 through FY 2017, the base revenue amounts for the total revenues from all PDUFA fees are established by PDUFA V. The base revenue amount for FY 2013, which becomes the base amount for the remaining 4 FYs of PDUFA V, is $718,699,000, as published in the **Federal Register** of August 1, 2012 (77 FR 45639). That FY 2013 base revenue amount is further adjusted each year after FY 2013 for inflation and workload. Fees for applications, establishments, and products are to be established each year by FDA so that revenues from each category will provide one-third of the total revenue to be collected each year.

II. Fee Revenue Amount for FY 2014

The base revenue amount for FY 2014 is $718,699,000, prior to adjustment for inflation and workload (see section 736(c)(1) of the FD&C Act).

A. FY 2014 Statutory Fee Revenue Adjustments for Inflation

PDUFA V specifies that the $718,699,000 is to be further adjusted for inflation increases for FY 2014 using 2 separate adjustments—one for payroll costs and one for non-pay costs (see section 736(c)(1) of the FD&C Act).

The component of the inflation adjustment for payroll costs shall be 1 plus the average annual percent change in the cost of all personnel compensation and benefits (PC&B) paid per full-time equivalent position (FTE) at FDA for the first 3 of the 4 preceding FYs, multiplied by the proportion of PC&B costs to total FDA costs of the review of human drug applications for the first 3 of the preceding 4 FYs (see section 736(c)(1)(B) of the FD&C Act). The data on total PC&B paid and numbers of FTE paid, from which the average cost per FTE can be derived, are published in FDA's Justification of Estimates for Appropriations Committees.

Table 1 of this document summarizes that actual cost and FTE data for the specified FYs, and provides the percent change from the previous FY and the average percent change over the first 3 of the 4 FYs preceding FY 2014. The 3-year average is 2.05 percent.

TABLE 1—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGE

Fiscal year	2010	2011	2012	3-Year average
Total PC&B	$1,634,108,000	$1,761,655,000	$1,824,703,000	.....
Total FTE	12,526	13,331	13,382	.....
PC&B per FTE	$130,457	$132,147	$136,355	.....
Percent Change from Previous Year	1.67%	1.30%	3.18%	2.05%

The statute specifies that this 2.05 percent should be multiplied by the proportion of PC&B for the review of human drug applications. Table 2 of this document shows the amount of PC&B and the total amount obligated for the process for the review of human drug applications for the same 3 FYs.

TABLE 2—PC&B AS A PERCENT OF FEE REVENUES SPENT ON THE PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS

Fiscal year	2010	2011	2012	3-Year average
Total PC&B	$573,603,582	$596,627,595	$592,642,252	.....
Total Costs	$931,845,581	$1,025,621,707	$1,032,419,218	.....
PC&B Percent	62%	58%	57%	59%

The payroll adjustment is 2.05 percent multiplied by 59 percent (or 1.21 percent).

The statute specifies that the portion of the inflation adjustment for non-payroll costs for FY 2014 is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC–MD–VA–WV; not seasonally adjusted; all items; annual

index) for the first 3 of the preceding 4 years of available data multiplied by the proportion of all costs of the process for the review of human drug applications other than PC&B (see section 736(c)(1)(C) of the FD&C Act). Table 3 of this document provides the summary data for the percent change in the specified CPI for the Baltimore-Washington area. The data is published by the Bureau of Labor Statistics and can be found on their Web site at *http://data.bls.gov/cgi-bin/surveymost?cu* by checking the box marked ''Washington-Baltimore All Items, November 1996=100—CUURA311SA0'' and then clicking on the ''Retrieve Data'' button.

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN BALTIMORE-WASHINGTON AREA CPI

Year	2010	2011	2012	3-Year average
Annual CPI	142.218	146.975	150.212	
Annual Percent Change	1.72%	3.34%	2.20%	2.42%

To calculate the inflation adjustment for non-pay costs, we multiply the 2.42 percent by the proportion of costs of the process for the review of human drug applications obligated for costs other than PC&B. Since 59 percent was obligated for PC&B as shown in table 2 of this document, 41 percent is the portion of costs other than PC&B (100 percent minus 59 percent equals 41 percent). The non-payroll adjustment is 2.42 percent times 41 percent, or 0.99 percent.

To complete the inflation adjustment, we add the payroll component (1.21 percent) to the non-pay component (0.99 percent), for a total inflation adjustment of 2.20 percent (rounded), and then add one, making 1.0220. We then multiply the amount base revenue amount for FY 2014 ($718,669,000) by 1.0220, yielding an inflation adjusted amount of $734,479,718.

B. FY 2014 Statutory Fee Revenue Adjustments for Workload

Title I of the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144) specifies that after the $718,699,000 has been adjusted for inflation, the inflation adjusted amount ($734,479,718) shall be further adjusted for workload (see section 736(c)(2) of the FD&C Act). Title I also requires an independent accounting or consulting firm to review the adequacy of the adjustment for workload in FY 2013 and FY 2015 and publish the results of those reviews (see section 103(c)(2) of FDASIA). The reports must evaluate whether the adjustment reasonably represents actual changes in workload volume and complexity of human drug review and present recommendations to discontinue, retain, or modify any elements of the adjustment. After review of the reports and receipt of public comments, FDA may adopt appropriate changes to the workload adjustment methodology. FDA contracted with an independent consulting firm in FY 2013 to conduct the first required assessment of the workload adjuster. This assessment examined the performance of the workload adjuster and its ability to effectively measure changes in workload volume and complexity during the FY 2009–2013 period. The report is available online at *http://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM350567.pdf.* The report found that the current methodology reasonably represents workload volume associated with the human drug review process. However, the report concluded that the methodology is flawed with respect to measuring workload complexity, known as the *adjustment for changes in review activities* (''Complexity Factor''), because it does not represent the total amount of work per submission. The report further notes that work complexity increased substantially during the evaluation period, but the Complexity Factor produced negative adjustments to the overall Workload Adjuster, indicating that human drug review became less complex over this period. Accordingly, the report recommends that FDA consider removing the current Complexity Factor. The report also found that the statute's use of 5-year rolling averages to measure changes in workload against the base years was not as sensitive to recent trends as 3-year rolling averages would be. After reviewing the report, FDA is removing the Complexity Factor from the workload adjustment methodology and adopting 3-year averages to measure changes in workload volume, rather than the 5-year averages used in prior adjustments. This is consistent with the use of 3-year averages for inflation adjustment calculations as called for under PDUFA V (section 736(c)(1) of the FD&C Act). The public comment received on the report indicated that changes to the workload adjuster methodology should be considered in the context of other aspects of the PDUFA financial model, including standard costs and time reporting in the human drug review process. FDA agrees with this point and will consider multiple aspects of the PDUFA financial model as the Agency investigates alternative methods to more accurately account for work complexity in the workload adjuster.

The statute specifies that changes FDA adopts are effective the first FY after FDA adopts the changes and each subsequent FY. Since FDA is adopting the changes in FY 2013, the changes are effective for FY 2014 fees.

To calculate the FY 2014 adjustment factor, FDA calculated the average number of each of the four types of applications specified in the workload adjustment provision: (1) Human drug applications; (2) active commercial investigational new drug applications (INDs) (applications that have at least one submission during the previous 12 months); (3) efficacy supplements; and (4) manufacturing supplements received over the 3-year period that ended on June 30, 2012 (base years), and the average number of each of these types of applications over the most recent 3 year period that ended June 30, 2013.

The calculations are summarized in table 4 of this document. The 3-year averages for each application category are provided in column 1 (''3-Year Average Base Years 2010–2012'') and column 2 (''3-Year Average 2011–2013'').

Column 3 of table 4 of this document reflects the percent change in workload from column 1 to column 2. Column 4 of table 4 of this document shows the weighting factor for each type of application, estimating how much of the total FDA drug review workload was accounted for by each type of application in the table during the most recent 3 years. Column 5 of table 4 of this document is the weighted percent change in each category of workload. This was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of table 4 of this document is the sum of the values in column 5 that are added, reflecting an increase in workload of 3.07 percent for FY 2014 when compared to the base years.

TABLE 4—WORKLOAD ADJUSTER CALCULATION FOR FY 2014

Application type	Column 1	Column 2	Column 3	Column 4	Column 5
	3-year average base years 2010–2012	3-year average 2011–2013	Percent change (Column 1 to Column 2)	Weighting factor (percent)	Weighted percent change
New Drug Applications/Biologics License Applications	124.4	131.0	5.39	38.6	2.08
Active Commercial INDs	6830.0	6965.0	1.98	41.4	0.82
Efficacy Supplements	136.3	140.3	2.93	9.3	0.27
Manufacturing Supplements	2548.3	2524.7	−0.93	10.7	−0.10
FY 2014 Workload Adjuster					3.07

The FY 2014 workload adjustment in the last line of Table 4 of this document is 3.07 percent.

Table 5 of this document shows the calculation of the revenue amount for FY 2014. The $718,669,000 subject to adjustment on the first line is multiplied by the inflation adjustment factor of 1.0220, resulting in the inflation adjusted amount on the third line, $734,479,718. That amount is then multiplied by one plus the workload adjustment of 3.07 percent, resulting in the inflation and workload adjusted amount of $757,028,000 on the fifth line, rounded to the nearest thousand dollars.

TABLE 5—PDUFA REVENUE AMOUNT FOR FY 2014, SUMMARY CALCULATION

FY 2013 Revenue Amount and Base Subsequent FYs as published in the **Federal Register** of August 1, 2012 (77 FR 45639) (rounded to nearest thousand dollars)	$718,669,000
Inflation Adjustment Factor for FY 2014 (1 plus 2.20 percent)	1.0220
Inflation Adjusted Amount	$734,479,718
Workload Adjustment Factor for FY 2013 (1 plus 3.07 percent)	1.0307
Inflation and Workload Adjusted Amount (rounded to nearest thousand dollars)	$757,028,000

PDUFA specifies that one-third of the total fee revenue is to be derived from application fees, one-third from establishment fees, and one-third from product fees (see section 736(b)(2) of the FD&C Act). Accordingly, one third of the total revenue amount ($757,028,000), or a total of $252,342,667, is the amount of fee revenue that will be derived from each of these fee categories: Application Fees, Establishment Fees, and Product Fees.

III. Application Fee Calculations

A. Application Fee Revenues and Application Fees

Application fees will be set to generate one-third of the total fee revenue amount, or $252,342,667 in FY 2014, as calculated previously in this document.

B. Estimate of the Number of Fee-Paying Applications and the Establishment of Application Fees

For FY 2013 through FY 2017, FDA will estimate the total number of fee-paying full application equivalents (FAEs) it expects to receive the next FY by averaging the number of fee-paying FAEs received in the three most recently completed FYs. This will avoid having FDA try to estimate the number it expects to receive in the current FY.

In estimating the number of fee-paying FAEs, a full application requiring clinical data counts as one FAE. An application not requiring clinical data counts as one-half an FAE, as does a supplement requiring clinical data. An application that is withdrawn, or refused for filing, counts as one-fourth of an FAE if the applicant initially paid a full application fee, or one-eighth of an FAE if the applicant initially paid one-half of the full application fee amount.

As table 6 of this document shows, the average number of fee-paying FAEs received annually in the most recent 3-year period is 116.333 FAEs. FDA will set fees for FY 2014 based on this estimate as the number of full application equivalents that will pay fees.

TABLE 6—FEE-PAYING FAE 3-YEAR AVERAGE

FY	2010	2011	2012	3-year average
Fee-Paying FAEs	118.375	108.250	122.375	116.333

The FY 2014 application fee is estimated by dividing the average number of full applications that paid fees over the latest 3 years, 116.333, into the fee revenue amount to be derived from application fees in FY 2014, $252,342,667. The result, rounded to the nearest $100, is a fee of $2,169,100 per full application requiring clinical data, and $1,084,550 per application not requiring clinical data or per supplement requiring clinical data.

IV. Fee Calculations for Establishment and Product Fees

A. Establishment Fees

At the beginning of FY 2013, the establishment fee was based on an estimate that 455 establishments would be subject to and would pay fees. By the

end of FY 2013, FDA estimates that 490 establishments will have been billed for establishment fees, before all decisions on requests for waivers or reductions are made. FDA estimates that a total of 20 establishment fee waivers or reductions will be made for FY 2013. In addition, FDA estimates that another 15 full establishment fees will be exempted this year based on the orphan drug exemption in section 736(k) of the FD&C Act. Subtracting 35 establishments (20 waivers, plus the estimated 15 establishments under the orphan exemption) from 490 leaves a net of 455 fee-paying establishments. FDA will use 455 for its FY 2014 estimate of establishments paying fees, after taking waivers and reductions into account. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($252,342,667) by the estimated 455 establishments, for an establishment fee rate for FY 2014 of $554,600 (rounded to the nearest $100).

B. Product Fees

At the beginning of FY 2013, the product fee was based on an estimate that 2,435 products would be subject to and would pay product fees. By the end of FY 2013, FDA estimates that 2,510 products will have been billed for product fees, before all decisions on requests for waivers, reductions, or exemptions are made. FDA assumes that there will be 45 waivers and reductions granted. In addition, FDA estimates that another 40 product fees will be exempted this year based on the orphan drug exemption in section 736(k) of the FD&C Act. FDA estimates that 2,425 products will qualify for product fees in FY 2013, after allowing for waivers and reductions, including the orphan drug products, and will use this number for its FY 2014 estimate. The FY 2014 product fee rate is determined by dividing the adjusted total fee revenue to be derived from product fees ($252,342,667) by the estimated 2,425 products for a FY 2014 product fee of $104,060 (rounded to the nearest $10).

V. Fee Schedule for FY 2014

The fee rates for FY 2014 are set out in table 7 of this document:

TABLE 7—FEE SCHEDULE FOR FY 2014

Fee category	Fee rates for FY 2014
Applications:	
Requiring clinical data	$2,169,100
Not requiring clinical data	1,084,550
Supplements requiring clinical data	1,084,550
Establishments	554,600
Products	104,060

VI. Fee Payment Options and Procedures

A. Application Fees

The appropriate application fee established in the new fee schedule must be paid for any application or supplement subject to fees under PDUFA that is received after September 30, 2013. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Please include the user fee identification (ID) number on your check, bank draft, or postal money order. Your payment can be mailed to: Food and Drug Administration, P.O. Box 979107, St. Louis, MO 63197–9000.

If checks are to be sent by a courier that requests a street address, the courier can deliver the checks to: U.S. Bank, Attention: Government Lockbox 979107, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only. Contact the U.S. Bank at 314–418–4013 if you have any questions concerning courier delivery.)

Please make sure that the FDA post office box number (P.O. Box 979107) is written on the check, bank draft, or postal money order.

Wire transfer payment may also be used. Please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. Please ask your financial institution about the fee and add it to your payment to ensure that your fee is fully paid. The account information is as follows: New York Federal Reserve Bank, U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No.: 75060099, Routing No.: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 1350 Piccard Drive, Rockville, MD.

Application fees can also be paid online with an electronic check (ACH). FDA has partnered with the U.S. Department of the Treasury to use Pay.gov, a Web-based payment application, for online electronic payment. The Pay.gov feature is available on the FDA Web site after the user fee ID number is generated.

The tax identification number of FDA is 53–0196965.

B. Establishment and Product Fees

FDA will issue invoices for establishment and product fees for FY 2014 under the new fee schedule in August 2013. Payment will be due on October 1, 2013. FDA will issue invoices in November 2014 for any products and establishments subject to fees for FY 2014 that qualify for fee assessments after the August 2013 billing.

Dated: July 29, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–18624 Filed 8–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0869]

Pfizer, Inc.; Withdrawal of Approval of a New Drug Application for BEXTRA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new drug application (NDA) for BEXTRA (valdecoxib) 10 milligram (mg) and 20 mg Tablets, held by Pfizer, Inc. (Pfizer), 235 East 42nd St., New York, NY 10017–5755. Pfizer has voluntarily requested that approval of this application be withdrawn and has waived its opportunity for a hearing.

DATES: Effective August 2, 2013.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6250, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: FDA approved BEXTRA (valdecoxib) 10 mg and 20 mg Tablets on November 16, 2001. BEXTRA is indicated for relief of the signs and symptoms of osteoarthritis and adult rheumatoid arthritis and for the treatment of primary dysmenorrhea. On April 7, 2005, FDA announced that it had concluded that the overall risk versus benefit profile of BEXTRA was unfavorable and that it had asked Pfizer to voluntarily withdraw BEXTRA from the market. Pfizer agreed and voluntarily suspended all sales and marketing of BEXTRA on July 21, 2005. In letters dated May 27, 2011, August 8,

2011, and October 31, 2011, Pfizer requested that FDA withdraw approval of NDA 21–341 for BEXTRA. In the letter dated October 31, 2011, Pfizer waived any opportunity for a hearing otherwise provided under 21 CFR 314.150 (§ 314.150). In FDA's letter of November 9, 2011, responding to Pfizer's letters dated May 27, 2011, August 8, 2011, and October 31, 2011, the Agency acknowledged Pfizer's request to withdraw approval of BEXTRA under § 314.150(d) and waive its opportunity for a hearing.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(e)) and § 314.150(d), and under authority delegated by the Commissioner to the Director, Center for Drug Evaluation and Research, approval of NDA 21–341, and all amendments and supplements thereto, is withdrawn (see DATES). Distribution of this product in interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the FD&C Act (21 U.S.C. 355(a) and 331(d)).

Dated: July 30, 2013.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 2013–18657 Filed 8–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Direct Service and Contracting Tribes; National Indian Health Outreach and Education; Cooperative Agreement Program

Announcement Type: Limited New and Competing Continuation
Funding Announcement Number: HHS–2013–IHS–NIHOE–0001
Catalog of Federal Domestic Assistance Number: 93.933

Key Dates

Application Deadline Date: September 6, 2013
Review Date: September 10, 2013
Earliest Anticipated Start Date: September 30, 2013
Proof of Non-Profit Status Due Date: September 6, 2013

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting competitive cooperative agreement applications for the National Indian Health Outreach and Education (NIHOE) I limited competition cooperative agreement program. This award includes the following four components, as described in this announcement: ''Line Item 128 Health Education and Outreach funds,'' ''Health Care Policy Analysis and Review,'' ''Budget Formulation'' and ''Tribal Leaders Diabetes Committee'' (TLDC). This program is authorized under the Snyder Act, codified at 25 U.S.C. 13. This program is described in the Catalog of Federal Domestic Assistance (CFDA) under 93.933.

Background

The NIHOE program carries out health program objectives in the American Indian and Alaska Native (AI/AN) community in the interest of improving Indian health care for all 566 Federally-recognized Tribes, including Tribal governments operating their own health care delivery systems through self-determination contracts with the IHS and Tribes that continue to receive health care directly from the IHS. This program addresses health policy and health program issues and disseminates educational information to all AI/AN Tribes and villages. This program requires that public forums be held at Tribal educational consumer conferences to disseminate changes and updates in the latest health care information. This program also requires that regional and national meetings be coordinated for information dissemination as well as the inclusion of planning and technical assistance and health care recommendations on behalf of participating Tribes to ultimately inform IHS based on Tribal input through a broad based consumer network.

Purpose

The purpose of this IHS cooperative agreement is to further IHS's mission and goals related to providing quality health care to the AI/AN community through outreach and education efforts with the sole outcome of improving Indian health care. This award includes the following four health services components: Line Item 128 Health Education and Outreach funds, Health Care Policy Analysis and Review, Budget Formulation, and Tribal Leaders Diabetes Committee (TLDC).

Limited Competition Justification

Competition for the award included in this announcement is limited to national Indian health care organizations with at least ten years of experience providing education and outreach on a national scale. This limitation ensures that the awardee will have: (1) A national information-sharing infrastructure which will facilitate the timely exchange of information between the Department of Health and Human Services (HHS) and Tribes and Tribal organizations on a broad scale; (2) a national perspective on the needs of AI/AN communities that will ensure that the information developed and disseminated through the projects is appropriate, useful and addresses the most pressing needs of AI/AN communities; and (3) established relationships with Tribes and Tribal organizations that will foster open and honest participation by AI/AN communities. Regional or local organizations will not have the mechanisms in place to conduct communication on a national level, nor will they have an accurate picture of the health care needs facing AI/ANs nationwide. Organizations with less experience will lack the established relationships with Tribes and Tribal organizations throughout the country that will facilitate participation and the open and honest exchange of information between Tribes and HHS. With the limited funds available for these projects, HHS must ensure that the education and outreach efforts described in this announcement reach the widest audience possible in a timely fashion, are appropriately tailored to the needs of AI/AN communities throughout the country, and come from a source that AI/ANs recognize and trust. For these reasons, this is a limited competition announcement.

II. Award Information

Type of Award

Cooperative Agreement.

Estimated Funds Available

The total amount of funding identified for the current fiscal year 2013 is approximately $716,000. Three hundred thousand dollars ($300,000) is estimated for outreach, education, and support to Tribes who have elected to leave their Tribal Shares with the IHS (this amount could vary based on Tribal Shares assumptions; Line Item 128 Health Education and Outreach funding will be awarded in partial increments based on availability and amount of funding); $100,000 for the Health Care Policy Analysis and Review; $16,000 for the Budget Formulation; and $300,000 associated with providing legislative education, outreach and communications support to the IHS TLDC and to facilitate Tribal consultation on the Special Diabetes Program for Indians (SDPI). All competing and continuation awards

issued under this announcement are subject to the availability of funds. In the absence of funding, the IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

One award will be issued under this program announcement comprised of the following four components: Line Item 128 Health Education and Outreach; Health Care Policy Analysis and Review; Budget Formulation; and TLDC.

Project Period

The project period will run for one year from September 30, 2013 through September 29, 2014.

Cooperative Agreement

In HHS, a cooperative agreement is administered under the same policies as a grant. The funding agency (IHS) is required to have substantial programmatic involvement in the project during the entire award segment. Below is a detailed description of the level of involvement required for both IHS and the grantee. IHS will be responsible for activities listed under section A and the grantee will be responsible for activities listed under section B as stated:

Substantial Involvement Description for Cooperative Agreement

A. IHS Programmatic Involvement

1. The IHS assigned program official will work in partnership with the awardee in all decisions involving strategy, hiring of personnel, deployment of resources, release of public information materials, quality assurance, coordination of activities, any training, reports, budget and evaluation. Collaboration includes data analysis, interpretation of findings and reporting.

2. The IHS assigned program official will monitor the overall progress of the awardee's execution of the requirements of the award noted below, as well as their adherence to the terms and conditions of the cooperative agreement. This includes providing guidance for required reports, development of tools, and other products, interpreting program findings and assistance with evaluation and overcoming any slippages encountered.

3. The IHS assigned program official will coordinate review and provide final approval of any deliverables, including printed materials, reports, testimony, and PowerPoint slides, prior to their distribution or dissemination to HHS, Tribes, or the public.

4. The IHS assigned program official will also coordinate the following:

- Discussion and release of any and all special grant conditions upon fulfillment.
- Monthly scheduled conference calls.
- Appropriate dissemination of required reports to each participating IHS program.

5. IHS will jointly with the awardee, plan and set an agenda for an annual conference that:

- Shares the outcomes of the outreach and health education training provided.
- Fosters collaboration amongst the participating IHS program offices.
- Increases visibility for the partnership between the awardee and IHS.

6. IHS will provide guidance in preparing articles for publication and/or presentations of program successes, lessons learned and new findings.

7. IHS staff will review articles concerning the HHS for accuracy and may, if requested by the awardee, provide relevant articles.

8. IHS will communicate via monthly conference calls and meetings, individual or collective (all participating programs) site visits to the awardee.

9. IHS will provide technical assistance to the awardee as requested.

10. IHS staff may, at the request of the entity's board, participate on study groups, attend board meetings, and recommend topics for analysis and discussion.

B. Grantee Cooperative Agreement Award Activities

The awardee must obtain written IHS approval of all deliverables produced with award funds, including printed materials, reports, testimony, and PowerPoint slides, prior to their distribution or dissemination to HHS, Tribes, or the public.

The awardee must comply with relevant Office of Management and Budget (OMB) Circular provisions regarding lobbying, any applicable lobbying restrictions provided under other law and any applicable restriction on the use of appropriated funds for lobbying activities.

1. Line Item 128 Health Education and Outreach funding Is Utilized for Outreach, Health Education, and Support to Tribes—Approximately $300,000 Funding Is Available

The awardee is expected to:

a. Host an annual conference to disseminate changes and updates on health care information relative to AI/AN.

b. Host a mid-year consumer conference(s) as appropriate to disseminate changes and updates on health care information relative to AI/AN.

c. Conduct regional and national meeting coordination as appropriate.

d. Conduct health care information dissemination as appropriate.

e. Coordinate planning and technical assistance needs on behalf of Tribes/Tribal Organizations (T/TO) to IHS.

f. Convey health care recommendations on behalf of T/TO to IHS.

2. Health Care Policy Analysis and Review

This funding component requires the awardee to provide IHS with research and analysis of the impact of Centers for Medicare and Medicaid Services (CMS) programs on AI/AN beneficiaries and the health care delivery system that serves these beneficiaries. $100,000 funding is available for analysis of CMS programs that affect AI/AN beneficiaries:

The awardee will produce measurable outcomes to include:

a. Analytical reports, policy review and recommendation documents—The products will be in the form of written (hard copy and/or electronic files) documents that contain analysis of relevant health care issues to be reported on a monthly or quarterly basis during the IHS and CMS ''All Tribes Calls'' and face-to-face meetings with hard copies submitted to the Director, Office of Resource, Access and Partnerships (ORAP), IHS.

b. Educational and informational materials to be disseminated by the awardee and communicated to IHS and Tribal health program staff during monthly and quarterly conferences, the annual consumer conference, meetings and training sessions. This can be in the form of PowerPoint presentations, informational brochures, and/or handout materials.

The IHS will provide guidance and assistance as needed. Copies of all deliverables shall be submitted to the IHS Office of Direct Service and Contracting Tribes (ODSCT) and IHS ORAP.

3. Tribal Budget Consultation—Budget Formulation

The Awardee will provide assistance to IHS, Tribes, the Budget Formulation Workgroup, and to the technical team, by performing the following activities in coordination and support of the IHS Tribal Budget Consultation. Budget consultation is required by the Indian Self-Determination and Education

Assistance Act (ISDEAA), 25 U.S.C. 450j–1(i). Approximately $16,000 funding is available.

National Budget Work Session—January 2014

Meeting Responsibilities (Required)

Estimated Costs: The estimated costs for this activity shall not exceed $6,500. The awardee shall work with IHS/Office of Finance and Accounting (OFA)/Division of Budget Formulation (DBF) closely on this item.

Recordation of Meeting—The Awardee Shall Take Minutes During the Work Session

a. Minutes should be recorded in a clear and concise manner and identify all speakers including presenters and any individuals contributing comments or motions.

b. Minutes will be recorded in an objective manner.

c. Minutes shall include a record of any comments, votes, or recommendations made, as well as notation of any handouts and other materials referenced by speakers, documented by the speaker's name and affiliation.

d. Minutes shall document any written materials that were distributed at the meeting. These materials will be included with the submission of the transcription and the summary page outlining all key topics.

e. Minutes will include information regarding the next meeting, including the date, time and location and a list of topics to be addressed.

f. The minutes must be submitted to IHS/OFA for review and approval within five working days.

Further Instructions

The awardee shall:

a. Package and distribute results of work session to IHS/OFA within five working days, which includes minutes and the final set of agreed upon national budget and health priorities; and

b. Provide final documents needed for IHS budget formulation Web site.

HHS Tribal Consultation—March 2014

Preparation and Meeting Responsibilities

Estimated Costs: The estimated costs for this activity shall not exceed $3,000. The awardee shall work with IHS/OFA/DBF closely on this item.

The Tribal testimony is a combined effort that is written and presented by the National Tribal Budget Formulation Workgroup. The testimony is presented to the Secretary of HHS and related staff as part of the Annual National U.S. Department of Health and Human Services Tribal Budget and Policy Consultation.

Assist the selected Tribal Budget Formulation Workgroup to prepare for the HHS Consultation meeting to:

a. Arrange a workgroup meeting;

b. Prepare testimony, and PowerPoint presentation with talking points, with the content of both based on input from the workgroup and technical team and with the awardee responsible for formatting and design of the products;

c. Submit testimony and draft PowerPoint presentation to IHS for review and approval;

d. Package and distribute final materials, once approval from IHS is obtained; and

e. Deliver final testimony to IHS Budget Formulation prior to the presentation for final printing.

Assist Tribal presenters as needed with rehearsal of the presentation.

Arrange working space for the workgroup to provide final input to the presentation and finalize presentation, if needed—NTE two days.

Budget Formulation Evaluation/Planning Meeting—May 2014

Meeting Responsibilities (Required)

Estimated Costs: The estimated costs for this activity shall not exceed $6,500. The awardee shall work with IHS/OFA/DBF closely on this item.

Recordation of Meeting—The Awardee Shall Take Minutes During the Work Session

a. Minutes should be recorded in a clear and concise manner and identify all speakers including presenters and any individuals contributing comments or motions.

b. Minutes will be recorded in an objective manner.

c. Minutes shall include a record of any comments, votes, or recommendations made, as well as notation of any handouts and other materials referenced by speakers, documented by the speaker's name and affiliation.

d. Minutes shall document any written materials that were distributed at the meeting. These materials will be included with the submission of the transcription and the summary page outlining all key topics.

e. Minutes will include information regarding the next meeting, including the date, time and location and a list of topics to be addressed.

f. The minutes must be submitted to IHS/OFA for review and approval within five working days.

Further Instructions

Package and distribute results of work session:

a. To OFA within five working days; and

b. Provide final documents needed for IHS budget formulation Web site.

Additionally:

- All expenses will be itemized.
- If costs exceed the estimated cost for any part of this Scope of Work, approval from IHS/OFA must be granted before any release of funds.
- Preapproval from IHS is required before any subcontract may be awarded at a price above the estimated cost.

4. Facilitate Tribal Consultation on SDPI, Provide Meeting Support for TLDC, and Provide Education, Outreach and Communications Support

A total of $300,000 is available for tasks associated with facilitating Tribal consultation on the SDPI grant program, providing meeting support for the TLDC and providing education, outreach and communications support on the activities of the TLDC, the SDPI grant program and related diabetes/chronic disease issues.

Statement of Work

I. TLDC Tribal Consultation Meetings

a. Arrange TLDC Meetings and Strategic Planning workgroup sessions.

i. Quarterly Face-to-Face TLDC Meetings.

1. Tentative schedule of quarterly meetings will be as follows (subject to change):

(a) September 2013
(b) December 2013
(c) March 2014
(d) June 2014

2. Location (IHS Area and city) to be determined by TLDC members. Every effort will be made to utilize federal meeting space for TLDC meetings.

ii. TLDC Strategic Planning Workgroups.

1. Schedule conference calls and/or webinars for four workgroups. Schedule of calls will be made in conjunction with TLDC members.

b. Develop TLDC meeting and workgroup session agendas with the Division of Diabetes Treatment Program (DDTP) and TLDC.

i. The draft agenda will be developed in collaboration with the TLDC Tribal co-chair, and DDTP.

ii. The draft agenda will be provided to the TLDC Tribal Chairman and the DDTP Director or assignee.

c. Record and provide minutes of TLDC meetings and workgroup sessions.

i. Minutes will be completed as follows:

1. Minutes will be recorded in a clear and concise manner and identify all speakers including presenters and any individuals contributing comments or motions.

2. Minutes will be recorded in an objective manner.

3. Minutes shall include a record of any comments, votes, or recommendations made, as well as notation of any handouts and other materials referenced by speakers, documented by the speaker's name and affiliation.

4. Minutes shall document any written materials that were distributed at the meeting. These materials will be included with the submission of the transcription and the summary page outlining all key topics.

5. Minutes will include information regarding the next meeting, including the date, time and location and a list of topics to be addressed.

6. The minutes must be submitted to IHS/DDTP for review and approval within five working days.

ii. Provide final minutes and pertinent documents to the DDTP (as determined at each meeting).

d. Coordinate travel planning and travel/per diem reimbursement in accordance with the approved TLDC charter for 12 TLDC members (or their assigned alternate) and five Technical Advisors to attend four quarterly TLDC meetings.

i. Travel planning and reimbursement process will include:

1. Direct communication with TLDC members (and alternates, as necessary) and technical advisors to assist in travel arrangements.

2. Provide logistical information to TLDC members and advisors for meeting location and lodging.

3. Prepare and distribute reimbursement forms with clear instructions in advance of the meeting and serve as the point of contact for communicating any additional travel information that is required.

4. Collect reimbursement forms and provide timely reimbursement of approved participants' expenses within 30 days of the receipt of the claim forms.

5. Report travel reimbursements costs per meeting.

6. Maintain an active TLDC email directory in order to assist the DDTP and the TLDC with broadcasting related meeting, travel and reimbursement information and soliciting related feedback.

7. Include identified DDTP staff on all email correspondence to TLDC members and Technical Advisors.

II. Provide Education, Outreach and Communications Support

a. Communicate with Tribal leaders and Indian organizations about the activities of the TLDC, the SDPI grant program and related diabetes/chronic disease issues.

i. Provide factual information, review and analysis of legislative and policy issues that are relevant to diabetes and related chronic conditions in AI/ANs and on related health care disparities in written and e-file format for the purpose of keeping TLDC membership up-to-date on such information and for sharing with other Tribal leadership, Indian organizations and others.

ii. Coordinate sharing TLDC-approved information with national non-profit organizations such as the Juvenile Diabetes Research Foundation and the American Diabetes Association for strengthening outreach to Tribes and Tribal communities as well as education and outreach to non-Indian communities in the United States about AI/ANs living with diabetes and other chronic diseases.

iii. Support presentation and exhibit costs for DDTP staff and assignees to include a plenary and up to four workshops presentations on diabetes, SDPI and related chronic disease at:

1. National NIHB Public Health Summit and the annual consumer conference; and

2. Other national Tribal health care conferences/meetings such as the NCAI annual conference.

iv. Support exhibit opportunity for SDPI Community-directed and Diabetes Prevention/Health Heart Initiatives grant programs to display programmatic information at the 2013 national NIHB Public Health Summit.

b. Support DDTP collaborative efforts to address issues associated with diabetes and obesity in AI/AN youth including food insecurity, prenatal stressors, depression and adverse childhood events.

i. Provide DDTP with current factual information on the epidemic of diabetes and obesity in AI/AN youth as well as issues related to child wellbeing; and review and analyze legislative and policy issues that are relevant to these topics.

ii. Coordinate several virtual meetings with IHS staff and staff from other agencies, Tribal organizations and relevant non-profit organizations on issues related to current efforts and potential collaborations related to child well-being.

iii. Provide written reports that contain factual analyses of policy issues and summaries of the coordinated virtual meetings for the purpose of assisting DDTP and the TLDC with communication to Tribes, Tribal leaders, Indian organizations and others about relevant issues pertinent to diabetes, obesity and wellbeing in AI/AN youth.

Eligibility Information

This is a limited competition announcement.

1. Eligibility

Eligible applicants are 501(c)(3) national Indian organizations that meet the following criteria: Eligible entities must have demonstrated expertise in:

- Representing all Tribal governments and providing a variety of services to Tribes, Area Health Boards, Tribal organizations, and Federal agencies, and playing a major role in focusing attention on Indian health care needs, resulting in improved health outcomes for Tribes.
- Promoting and supporting Indian education, and coordinating efforts to inform AI/AN of Federal decisions that affect Tribal government interests including the improvement of Indian health care.
- Administering national health policy and health programs.
- Maintaining a national AI/AN constituency and clearly supporting critical services and activities within the IHS mission of improving the quality of health care for AI/AN people.
- Supporting improved healthcare in Indian Country.

The national Indian organization must have the infrastructure in place to accomplish the work under the proposed program.

Note: Please refer to Section IV.2 (Application and Submission Information/ Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required such as Tribal resolutions, proof of non-profit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

If application budgets exceed the highest dollar amount outlined under the ''Estimated Funds Available'' section within this funding announcement, the application will be considered ineligible and will not be reviewed for further consideration. If deemed ineligible, IHS will not return the application. The applicant will be notified by email by the Division of

Grants Management (DGM) of this decision.

Proof of Non-Profit Status

Organizations claiming non-profit status must submit proof. A copy of the 501(c)(3) Certificate must be received with the application submission by the Application Deadline Date listed under the Key Dates section on page one of this announcement.

An applicant submitting any of the above additional documentation after the initial application submission due date is required to ensure the information was received by the IHS by obtaining documentation confirming delivery (i.e. FedEx tracking, postal return receipt, etc.).

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement can be found at *http://www.Grants.gov* or *https://www.ihs.gov/dgm/index.cfm?module=dsp_dgm_funding.*

Questions regarding the electronic application process may be directed to Paul Gettys at (301) 443–2114.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Table of contents.
- Abstract (one page) summarizing the project.
- Application forms:
  - SF–424, Application for Federal Assistance.
  - SF–424A, Budget Information—Non-Construction Programs.
  - SF–424B, Assurances—Non-Construction Programs.
- Budget Justification and Narrative (must be single spaced and not exceed five pages).
- Project Narrative (must not exceed ten pages for each of the four components pages).
  - Background information on the organization.
  - Proposed scope of work, objectives, and activities that provide a description of what will be accomplished, including a one-page Timeframe Chart.
- Letter of Support from Organization's Board of Directors.
- 501(c)(3) Certificate.
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL).
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required) in order to receive IDC.
- Organizational Chart (optional).
- Documentation of current OMB A–133 required Financial Audit (if applicable).

Acceptable forms of documentation include:

- Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
- Face sheets from audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/sac/dissem/accessoptions.html?submit=Go+To+Database.*

Public Policy Requirements

All Federal-wide public policies apply to IHS grants with exception of the Discrimination policy.

Requirements for Project and Budget Narratives

A. Project Narrative: This narrative should be a separate Word document that is no longer than ten pages per each component pages and must: be single-spaced, be type written, have consecutively numbered pages, use black type not smaller than 12 characters per one inch, and be printed on one side only of standard size 8½″ × 11″ paper.

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation criteria in this announcement) and place all responses and required information in the correct section (noted below), or they will not be considered or scored. These narratives will assist the Objective Review Committee (ORC) in becoming more familiar with the grantee's activities and accomplishments prior to this grant award. If the narrative exceeds the page limit, only the first ten pages of each of the four components pages will be reviewed. The ten pages per component page limit for the narrative does not include the work plan, standard forms, Tribal resolutions, table of contents, budget, budget justifications, narratives, and/or other appendix items.

There are three parts to the narrative: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report. See below for additional details about what must be included in the narrative.

Part A: Program Information (2 Page Limitation)

Section 1: Needs

Describe how the national Indian organization has the expertise to provide outreach and education efforts on a continuing basis regarding the pertinent changes and updates in health care for each of the four components listed herein.

Part B: Program Planning and Evaluation (6 Page Limitation)

Section 1: Program Plans

Describe fully and clearly how the national Indian organization plans to address the NIHOE requirements, including how the national Indian organization plans to demonstrate improved health education and outreach services to all 566 Federally-recognized Tribes for each of the four components described herein. Include proposed timelines as appropriate and applicable.

Section 2: Program Evaluation

Describe fully and clearly how the outreach and education efforts will impact changes in knowledge and awareness in Tribal communities. Identify anticipated or expected benefits for the Tribal constituency.

Part C: Program Report (2 Page Limitation)

Section 1: Describe Major Accomplishments Over the Last 24 Months

Please identify and describe significant program achievements associated with the delivery of quality health outreach and education services. Provide a comparison of the actual accomplishments to the goals established for the project period, or if applicable, provide justification for the lack of progress.

Section 2: Describe Major Activities Over the Last 24 Months

Please identify and summarize recent major health related project activities of the work done during the project period.

B. Budget Narrative: This narrative must describe the budget requested and match the scope of work described in the project narrative. The budget narrative should not exceed five pages.

3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by 12:00 a.m., midnight Eastern Standard Time (EST) on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Any application received after the

application deadline will not be accepted for processing, nor will it be given further consideration for funding. The applicant will be notified by the DGM via email of this decision.

If technical challenges arise and assistance is required with the electronic application process, contact Grants.gov Customer Support via email to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Paul Gettys, DGM (*Paul.Gettys@ihs.gov*) at (301) 443–2114. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a Grants.gov tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

If the applicant needs to submit a paper application instead of submitting electronically via Grants.gov, prior approval must be requested and obtained (see Section IV.6 below for additional information). The waiver must be documented in writing (emails are acceptable), *before* submitting a paper application. A copy of the written approval must be submitted along with the hardcopy that is mailed to the DGM. Once the waiver request has been approved, the applicant will receive a confirmation of approval and the mailing address to submit the application. Paper applications that are submitted without a waiver from the Acting Director of DGM will not be reviewed or considered further for funding. The applicant will be notified via email of this decision by the Grants Management Officer of DGM. Paper applications must be received by the DGM no later than 5:00 p.m., EST, on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Late applications will not be accepted for processing or considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one grant/cooperative agreement will be awarded per applicant.
- IHS will not acknowledge receipt of applications.

6. Electronic Submission Requirements

All applications must be submitted electronically. Please use the *http://www.Grants.gov* Web site to submit an application electronically and select the ''Find Grant Opportunities'' link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the completed application via the *http://www.Grants.gov* Web site. Electronic copies of the application may not be submitted as attachments to email messages addressed to IHS employees or offices.

If the applicant receives a waiver to submit paper application documents, they must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the Application Deadline Date listed in the Key Dates section on page one of this announcement.

Applicants that do not adhere to the timelines for System for Award Management (SAM) and/or *http://www.Grants.gov* registration or that fail to request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

- Please search for the application package in *http://www.Grants.gov* by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application electronically, please contact Grants.gov Support directly at: *support@grants.gov* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).
- Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- If it is determined that a waiver is needed, the applicant must submit a request in writing (emails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov*. Please include a clear justification for the need to deviate from our standard electronic submission process.
- If the waiver is approved, the application should be sent directly to the DGM by the Application Deadline Date listed in the Key Dates section on page one of this announcement.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for SAM and Grants.gov could take up to fifteen working days.
- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the DGM.
- All applicants must comply with any page limitation requirements described in this Funding Announcement.
- After electronically submitting the application, the applicant will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGM will download the application from Grants.gov and provide necessary copies to the appropriate agency officials. Neither the DGM nor the ODSCT will notify the applicant that the application has been received.
- Email applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B which uniquely identifies your entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, you may access it through *http://fedgov.dnb.com/webform,* or to expedite the process, call (866) 705–5711.

All HHS recipients are required by the Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), to report information on subawards. Accordingly, all IHS grantees must notify potential first-tier subrecipients that no entity may receive a first-tier subaward unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that were not registered with Central Contractor Registration (CCR) and have not registered with SAM will need to obtain a DUNS number first and then access the SAM online registration through the SAM home page at *https://www.sam.gov* (U.S. organizations will also need to provide an Employer Identification Number

from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour to complete and SAM registration will take 3–5 business days to process. Registration with the SAM is free of charge. Applicants may register online at *https://www.sam.gov.*

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, can be found on the IHS Grants Management, Grants Policy Web site: *https://www.ihs.gov/dgm/index.cfm?module=dsp_dgm_policy_topics.*

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The ten-page narrative allowed per each of the four components page narrative should include only the first year of activities; information for multi-year projects should be included as an appendix. See ''Multi-year Project Requirements'' at the end of this section for more information. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 60 points is required for funding. Points are assigned as follows:

1. Criteria

A. Introduction and Need for Assistance (15 Points)

(1) Describe the organization's current health, education and technical assistance operations as related to the broad spectrum of health needs of the AI/AN community. Include what programs and services are currently provided (i.e., Federally-funded, State-funded, etc.), any memorandums of agreement with other National, Area or local Indian health board organizations. This could also include HHS agencies that rely on the applicant as the primary gateway organization to AI/AN communities that is capable of providing the dissemination of health information. Include information regarding technologies currently used (i.e., hardware, software, services, Web sites, etc.), and identify the source(s) of technical support for those technologies (i.e., in-house staff, contractors, vendors, etc.). Include information regarding how long the applicant has been operating and its length of association/partnerships with Area health boards, etc. [historical collaboration].

(2) Describe the organization's current technical assistance ability. Include what programs and services are currently provided, programs and services projected to be provided, memorandums of agreement with other national Indian organizations that deem the applicant as the primary source of health policy information for AI/AN, memorandums of agreement with other Area Indian health boards, etc.

(3) Describe the population to be served by the proposed projects.

(4) Identify all previous IHS cooperative agreement awards received, dates of funding and summaries of the projects' accomplishments. State how previous cooperative agreement funds facilitated education, training and technical assistance nationwide for AI/ANs and relate the progression of health care information delivery and development relative to the current proposed projects. (Copies of reports will not be accepted.)

(5) Describe collaborative and supportive efforts with national, Area and local Indian health boards.

(6) Explain the need/reason for your proposed projects by identifying specific gaps or weaknesses in services or infrastructure that will be addressed by the proposed projects. Explain how these gaps/weaknesses have been assessed.

(7) If the proposed projects include information technology (i.e., hardware, software, etc.), provide further information regarding measures taken or to be taken that ensure the proposed projects will not create other gaps in services or infrastructure (i.e., negatively or adversely affect IHS interface capability, Government Performance Results Act reporting requirements, contract reporting requirements, Information Technology (IT) compatibility, etc.), if applicable.

(8) Describe the effect of the proposed projects on current programs (i.e., Federally-funded, State-funded, etc.) and, if applicable, on current equipment (i.e., hardware, software, services, etc.). Include the effect of the proposed projects on planned/anticipated programs and/or equipment.

(9) Describe how the projects relate to the purpose of the cooperative agreement by addressing the following: Identify how the proposed projects will address outreach and education regarding each of the four components: Line Item 128 Health Education and Outreach funds, Health Care Policy Analysis and Review, Budget Formulation, and TLDC.

B. Project Objective(s), Work Plan and Approach (40 Points)

(1) Identify the proposed objective(s) for each of the four projects, as applicable. Objectives should be:

- Measurable and (if applicable) quantifiable.
- results oriented.
- time-limited.

Example: Issue four quarterly newsletters, provide alerts and quantify number of contacts with Tribes.

Goals must be clear and concise. Objectives must be measurable, feasible and attainable for each of the selected projects.

(2) Address how the proposed projects will result in change or improvement in program operations or processes for each proposed project objective for all of the projects. Also address what tangible products, if any, are expected from the projects, (i.e., policy analysis, annual conference, mid-year conferences, summits, etc.).

(3) Address the extent to which the proposed projects will provide, improve, or expand services that address the need(s) of the target population. Include a current strategic plan and business plan that includes the expanded services. Include the plan(s) with the application submission.

(4) Submit a work plan in the appendix which includes the following information:

- Provide the action steps on a timeline for accomplishing each of the projects' proposed objective(s).
- Identify who will perform the action steps.
- Identify who will supervise the action steps.
- Identify what tangible products will be produced during and at the end of the proposed projects' objective(s).
- Identify who will accept and/or approve work products during the duration of the proposed projects and at the end of the proposed projects.
- Include any training that will take place during the proposed projects and who will be attending the training.
- Include evaluation activities planned in the work plans.

5) If consultants or contractors will be used during the proposed project, please include the following information in their scope of work (or note if consultants/contractors will not be used):

- Educational requirements.
- Desired qualifications and work experience.

• Expected work products to be delivered on a timeline.

If a potential consultant/contractor has already been identified, please include a resume in the Appendix.

6) Describe what updates will be required for the continued success of the proposed projects. Include when these updates are anticipated and where funds will come from to conduct the update and/or maintenance.

C. Program Evaluation (20 Points)

Each proposed objective requires an evaluation component to assess its progression and ensure its completion. Also, include the evaluation activities in the work plan.

Describe the proposed plan to evaluate both outcomes and process. Outcome evaluation relates to the results identified in the objectives, and process evaluation relates to the work plan and activities of the project.

(1) For outcome evaluation, describe:

• What will the criteria be for determining success of each objective?

• What data will be collected to determine whether the objective was met?

• At what intervals will data be collected?

• Who will collect the data and their qualifications?

• How will the data be analyzed?

• How will the results be used?

(2) For process evaluation, describe:

• How will each project be monitored and assessed for potential problems and needed quality improvements?

• Who will be responsible for monitoring and managing each project's improvements based on results of ongoing process improvements and their qualifications?

• How will ongoing monitoring be used to improve the projects?

• Describe any products, such as manuals or policies, that might be developed and how they might lend themselves to replication by others.

• How will the organization document what is learned throughout each of the projects' periods?

(3) Describe any evaluation efforts planned after the grant period has ended.

(4) Describe the ultimate benefit to the AI/AN population that the applicant organization serves that will be derived from these projects.

D. Organizational Capabilities, Key Personnel and Qualifications (15 Points)

This section outlines the broader capacity of the organization to complete the project outlined in the work plan. It includes the identification of personnel responsible for completing tasks and the chain of responsibility for successful completion of the projects outlined in the work plan.

(1) Describe the organizational structure of the organization beyond health care activities, if applicable.

(2) Describe the ability of the organization to manage the proposed projects. Include information regarding similarly sized projects in scope and financial assistance, as well as other cooperative agreements/grants and projects successfully completed.

(3) Describe what equipment (i.e., fax machine, phone, computer, etc.) and facility space (i.e., office space) will be available for use during the proposed projects. Include information about any equipment not currently available that will be purchased through the cooperative agreement/grant.

(4) List key personnel who will work on the projects. Include title used in the work plans. In the appendix, include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties, indicating desired qualifications and experience requirements related to the proposed projects. Resumes must indicate that the proposed staff member is qualified to carry out the proposed projects' activities. If a position is to be filled, indicate that information on the proposed position description.

(5) If personnel are to be only partially funded by this cooperative agreement, indicate the percentage of time to be allocated to the projects and identify the resources used to fund the remainder of the individual's salary.

E. Categorical Budget and Budget Justification (10 Points)

This section should provide a clear estimate of the projects' program costs and justification for expenses for the entire cooperative agreement period. The budgets and budget justifications should be consistent with the tasks identified in the work plans.

(1) Provide a categorical budget for each of the 12-month budget periods requested for each of the four projects.

(2) If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the appendix.

(3) Provide a narrative justification explaining why each line item is necessary/relevant to the proposed project. Include sufficient cost and other details to facilitate the determination of cost allowability (i.e., equipment specifications, etc.).

Multi-Year Project Requirements (If Applicable)

Projects requiring second, third, fourth, and/or fifth year must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project.

Appendix Items

• Work plan, logic model and/or time line for proposed objectives.

• Position descriptions for key staff.

• Resumes of key staff that reflect current duties.

• Consultant or contractor proposed scope of work and letter of commitment (if applicable).

• Current Indirect Cost Agreement.

• Organizational chart(s) highlighting proposed project staff and their supervisors as well as other key contacts within the organization and key community contacts.

• Additional documents to support narrative (i.e. data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the ORC. Applicants will be notified by DGM, via email, to outline minor missing components (i.e., signature on the SF–424, audit documentation, key contact form) needed for an otherwise complete application. All missing documents must be sent to DGM on or before the due date listed in the email of notification of missing documents required.

To obtain a minimum score for funding by the ORC, applicants must address all program requirements and provide all required documentation. If an applicant receives less than a minimum score, it will be considered to be ''Disapproved'' and will be informed via email by the IHS Program Office of their application's deficiencies. A summary statement outlining the strengths and weaknesses of the application will be provided to each disapproved applicant. The summary statement will be sent to the Authorized Organizational Representative (AOR) that is identified on the face page (SF–424), of the application within 30 days of the completion of the Objective Review.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) is a legally binding document signed by the Grants Management Officer and serves

as the official notification of the grant award. The NoA will be initiated by the DGM in our grant system, GrantSolutions (*https://www.grantsolutions.gov*). Each entity that is approved for funding under this announcement will need to request or have a user account in GrantSolutions in order to retrieve their NoA. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

Disapproved Applicants

Applicants who received a score less than the recommended funding level for approval, 60 points, and were deemed to be disapproved by the ORC, will receive an Executive Summary Statement from the IHS Program Office within 30 days of the conclusion of the ORC outlining the weaknesses and strengths of their application submitted. The IHS program office will also provide additional contact information as needed to address questions and concerns as well as provide technical assistance if desired.

Approved But Unfunded Applicants

Approved but unfunded applicants that met the minimum scoring range and were deemed by the ORC to be ''Approved,'' but were not funded due to lack of funding, will have their applications held by DGM for a period of one year. If additional funding becomes available during the course of FY 2013, the approved application may be re-considered by the awarding program office for possible funding. The applicant will also receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC.

Note: Any correspondence other than the official NoA signed by an IHS Grants Management Official announcing to the Project Director that an award has been made to their organization is not an authorization to implement their program on behalf of IHS.

2. Administrative Requirements

Cooperative agreements are administered in accordance with the following regulations, policies, and OMB cost principles:

A. The criteria as outlined in this Program Announcement.

B. Administrative Regulations for Grants:

- 45 CFR Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments.
- 45 CFR Part 74, Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, and other Non-profit Organizations.

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

- 2 CFR Part 225—Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87).
- 2 CFR Part 230—Cost Principles for Non-Profit Organizations (OMB Circular A–122).

E. Audit Requirements:

- OMB Circular A–133, Audits of States, Local Governments, and Non-profit Organizations.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs (IDC) in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *https://rates.psc.gov/* and the Department of Interior (National Business Center) *http://www.doi.gov/ibc/services/Indirect_Cost_Services/index.cfm*. For questions regarding the indirect cost policy, please call (301) 443–5204 to request assistance.

4. Reporting Requirements

Grantees must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports. Reports must be submitted electronically via GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually, within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Reports

Federal Financial Report FFR (SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Division of Payment Management, HHS at: *http://www.dpm.psc.gov*. It is recommended that the applicant also send a copy of the FFR (SF–425) report to the Grants Management Specialist. Failure to submit timely reports may cause a disruption in timely payments to the organization.

Grantees are responsible and accountable for accurate information being reported on all required reports: The Progress Reports and Federal Financial Report.

C. Federal Subaward Reporting System (FSRS)

This award may be subject to the Transparency Act subaward and executive compensation reporting requirements of 2 CFR Part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier subawards and executive compensation under Federal assistance awards.

IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and

cooperative agreements issued on or after October 1, 2010, with a $25,000 subaward obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the project period is made up of more than one budget period) and where: (1) the project period start date was October 1, 2010 or after and (2) the primary awardee will have a $25,000 subaward obligation dollar threshold during any specific reporting period will be required to address the FSRS reporting. For the full IHS award term implementing this requirement and additional award applicability information, visit the Grants Management Grants Policy Web site at: *https://www.ihs.gov/dgm/index.cfm?module=dsp_dgm_policy_topics*.

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Mr. Chris Buchanan, Director, ODSCT, 801 Thompson Avenue, Suite 220, Rockville, MD 20852, Telephone: (301) 443–1104, Fax: (301) 443–4666, Email: *Chris.Buchanan@ihs.gov mailto:*

2. Questions on grants management and fiscal matters may be directed to: Mr. Andrew Diggs, DGM, Grants Management Specialist, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852, Telephone: (301) 443–5204, Fax: (301) 443–9602, Email: *Andrew.Diggs@ihs.gov*.

3. Questions on systems matters may be directed to: Mr. Paul Gettys, DGM, Grant Systems Coordinator, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852, Phone: 301–443–2114; or the DGM main line 301–443–5204, Fax: 301–443–9602, Email: *Paul.Gettys@ihs.gov*.

VIII. Other Information

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: July 26, 2013.

Yvette Roubideaux,

Acting Director, Indian Health Service.

[FR Doc. 2013–18596 Filed 8–1–13; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request: National Institute of Mental Health Recruitment and Milestone Reporting System

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Mental Health (NIMH), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and For Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Keisha Shropshire, NIMH Project Clearance Liaison, Science Policy and Evaluation Branch, OSPPC, NIMH, NIH, Neuroscience Center, 6001 Executive Boulevard, MSC 9667, Rockville Pike, Bethesda, MD 20892, or call 301–443–4335 or Email your request, including your address to: *nimhprapubliccomments@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments received within 60 days of the date of this publication will receive fullest consideration.

Proposed Collection: National Institute of Mental Health Recruitment Milestone Reporting System. 0925–New. National Institute of Mental Health (NIMH), National Institute of Health (NIH).

Need and Use of Information Collection: Recruitment Milestone Reporting (RMR) allows NIMH staff to monitor more accurately the recruitment of participants in NIMH-sponsored clinical research studies that plan to enroll 150 or more human subjects in a single study. Clinical studies can have difficulty recruiting, and accurate and timely reporting is the best way to ensure proper use of the grant funds. Investigators develop a recruitment plan that includes tri-yearly milestones for recruitment of the total study population, and for recruitment of racial and ethnic minority participants. Once recruitment is scheduled to begin, investigators report actual progress on recruitment milestones three times per year, by April 1, August 1, and December 1. The primary use of this information is to ensure that realistic recruitment targets are established from the onset of a project, and that these targets are met throughout the course of the research. By ensuring timely recruitment into clinical research studies, NIMH can reduce the need to extend timelines or supplement funds in order to complete the research project, and potentially increase efficiency in our funding process.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1519.

ESTIMATED ANNUALIZED BURDEN HOURS

Form	Type of respondent	Number of respondents	Frequency of response	Average time per response (in hours)	Annual hour burden
NIMH Recruitment Milestone Reporting.	Principal Investigators/ Research Assistant.	675	3	75/60	1519

Dated: July 19, 2013.

Sue Murrin,

Executive Officer, NIMH, NIH.

[FR Doc. 2013–18600 Filed 8–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE ON AGING, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA.

Date: October 16, 2013.

Closed: 8:00 a.m. to 8:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room, 251 Bayview Boulevard, Baltimore, MD 21224.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room, 251 Bayview Boulevard, Baltimore, MD 21224.

Closed: 12:00 p.m. to 1:15 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room, 251 Bayview Boulevard, Baltimore, MD 21224.

Open: 1:15 p.m. to 4:15 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room, 251 Bayview Boulevard, Baltimore, MD 21224.

Closed: 4:15 p.m. to 5:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room, 251 Bayview Boulevard, Baltimore, MD 21224.

Contact Person: Luigi Ferrucci, Ph.D., MD, Scientific Director, National Institute on Aging, 251 Bayview Boulevard, Suite 100, Room 4C225, Baltimore, MD 21224, 410–558–8110, *LF27Z@NIH.GOV*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–18584 Filed 8–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel Computer Integrated Systems for Microscopy & Manipulation (2014/01).

Date: October 10–11, 2013.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 200, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John K. Hayes, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging, and Bioengineering, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, 301–451–3398, *hayesj@mail.nih.gov*.

Dated: July 29, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–18586 Filed 8–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: September 12, 2013.

Closed: 8:30 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Open: 10:00 a.m. to 1:55 p.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, Ph.D., Director, Division of Extramural Activities, NIDCD, NIH, Room 8345, MSC 9670, 6001 Executive Blvd., Bethesda, MD 20892–9670, 301–496–8693, *jordanc@nidcd.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nidcd.nih.gov/about/groups/ndcdac/ndcdac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: July 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–18585 Filed 8–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified Laboratories and Instrumented Initial Testing Facilities (IITF) is published in the **Federal Register** during the first week of each month. If any Laboratory/IITF's certification is suspended or revoked, the Laboratory/IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any Laboratory/IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov.*

FOR FURTHER INFORMATION CONTACT: Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 7–1051, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs'', as amended in the revisions listed above, requires strict standards that Laboratories and Instrumented Initial Testing Facilities (IITF) must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies.

To become certified, an applicant Laboratory/IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory/IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and Instrumented Initial Testing Facilities (IITF) in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory/IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Instrumented Initial Testing Facilities (IITF)

None.

Laboratories

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.)

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281
DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890
ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609
Fortes Laboratories, Inc., 25749 SW Canyon Creek Road, Suite 600, Wilsonville, OR 97070, 503–486–1023
Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630
Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)
LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515
One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891 x7
Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555
Quest Diagnostics Clinical Laboratories d/b/a Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150, (Formerly: Advanced Toxicology Network)
Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370, (Formerly: SmithKline Beecham Clinical Laboratories)
Redwood Toxicology Laboratory, 3650 Westwind Blvd., Santa Rosa, CA 95403, 707–570–4434
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276
Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027
STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273
U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Janine Denis Cook,

Chemist, Division of Workplace Programs, Center for Substance Abuse Prevention, SAMHSA.

[FR Doc. 2013–18628 Filed 8–1–13; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2013–0047]

Agency Information Collection Activities: Submission for Review; Information Collection Request for the Department of Homeland Security (DHS), Science and Technology, CyberForensics Electronic Technology Clearinghouse (CyberFETCH) Program

AGENCY: Science and Technology Directorate, DHS.

ACTION: 60-day Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) Science & Technology (S&T) Directorate invites the general public to comment on data collection forms for the CyberForensics Electronic Technology Clearinghouse (CyberFETCH) program, and is a revision of a previously approved collection. CyberFETCH is responsible for providing a collaborative environment for cyber forensics practitioners from law enforcement, private sector and academia. This clearinghouse enables its users to share information, best practices and lessons learned within a secure collaborative environment. In order for a user to access this clearinghouse, he/she must complete a registration form to establish a user account. The information collected is used by the DHS S&T CyberFETCH program to determine the authenticity and suitability of the practitioner requesting access. Once approved, users will utilize the collaborative environment to upload documents/resources, exchange

information, network with other users, as well as post blogs and comments.

The DHS invites interested persons to comment on the following form and instructions (hereinafter ''Forms Package'') for the S&T CyberFETCH: (1) Request a CyberFETCH Account (DHS Form 10073). Interested persons may receive a copy of the Forms Package by contacting the DHS S&T PRA Coordinator. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until October 1, 2013.

ADDRESSES: Interested persons are invited to submit comments, identified by docket number DHS–2013–0047, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Please follow the instructions for submitting comments.
- *Email: megan.mahle@hq.dhs.gov*. Please include docket number DHS–2013–0047 in the subject line of the message.
- *Mail:* Science and Technology Directorate, ATTN: CyberFETCH, 245 Murray Drive, Mail Stop 0202, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: *megan.mahle@hq.dhs.gov;* (202) 254–2245 (Not a toll free number).

SUPPLEMENTARY INFORMATION: The information will be collected via the DHS S&T CyberFETCH secure Web site at *http://www.cyberfetch.org/*. The CyberFETCH Web site will only employ secure web-based technology (i.e., electronic registration form) to collect information from users to both reduce the burden and increase the efficiency of this collection.

The Department is committed to improving its information collection and urges all interested parties to suggest how these materials can further reduce burden while seeking necessary information under the Act.

DHS is particularly interested in comments that:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Renewal of a currently approved collection

(2) *Title of the Form/Collection:* Science and Technology, CyberForensics Electronic Technology Clearinghouse (CyberFETCH) program.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Department of Homeland Security, Science & Technology Directorate, Cyber Security Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals, consisting of federal, state and local law enforcement, private sector and academia practitioners. The information collected will be leveraged to determine the authenticity and suitability of the practitioner requesting access. Once approved, users will utilize the collaborative environment to upload documents/resources, exchange information, network with other users, as well as post blogs and comments.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 1000.

b. *An estimate of the time for an average respondent to respond:* .25 burden hours.

c. *An estimate of the total public burden (in hours) associated with the collection:* 250 burden hours.

Dated: July 2, 2013.

Rick Stevens,

Chief Information Officer for Science and Technology.

[FR Doc. 2013–18582 Filed 8–1–13; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Passenger List/Crew List

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Passenger List/Crew List (CBP Form I–418). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (78 FR 26648) on May 7, 2013, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before September 3, 2013 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the

burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Passenger List/Crew List.

OMB Number: 1651–0103.

Form Number: CBP Form I–418.

Abstract: CBP Form I–418 is prescribed by the Department of Homeland Security, Customs and Border Protection (CBP), for use by masters, owners, or agents of vessels in complying with Sections 231 and 251 of the Immigration and Nationality Act (INA). This form is filled out upon arrival of any person by commercial vessel at any port within the United States from any place outside the United States. The master or commanding officer of the vessel is responsible for providing CBP officers at the port of arrival with lists or manifests of the persons on board such conveyances. CBP is working to allow for electronic submission of the information on CBP Form I–418. This form is provided for in 8 CFR 251.1, 251.3, and 251.4. A copy of CBP Form I–418 can be found at *http://forms.cbp.gov/pdf/CBP_Form_I418.pdf.*

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours resulting from revised estimates of the number of forms filed, and from a pilot that is being conducted to eliminate the paper I–418. There is no change to information collected on CBP Form I–418.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 96,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Hours: 96,000.

Dated: July 29, 2013.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2013–18603 Filed 8–1–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5696–N–04]

Additional Waivers and Alternative Requirements for Hurricane Sandy Grantees in Receipt of Community Development Block Grant Disaster Recovery Funds

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: Previously, the Department allocated $5.4 billion of Community Development Block Grant disaster recovery (CDBG–DR) funds appropriated by the Disaster Relief Appropriations Act, 2013 for the purpose of assisting recovery in the most impacted and distressed areas declared a major disaster due to Hurricane Sandy (*see* 78 FR 14329, published in the **Federal Register** on March 5, 2013). This notice provides additional waivers and alternative requirements.

DATES: This notice is effective: August 6, 2013.

FOR FURTHER INFORMATION CONTACT: Stan Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Mr. Gimont at 202–401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.) Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2, approved January 29, 2013) (Appropriations Act) makes available $16 billion in Community Development Block Grant (CDBG) funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*) (Stafford Act), due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013.

On March 1, 2013, the President issued a sequestration order pursuant to section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (2 U.S.C. 901a), and reduced funding for CDBG disaster recovery (CDBG–DR) grants under the Appropriations Act to $15.18 billion. In a **Federal Register** notice published March 5, 2013 (78 FR 14329), the Department allocated $5.4 billion after analyzing the impacts of Hurricane Sandy and identifying unmet needs. A subsequent notice, providing additional guidance, waivers, and alternative requirements for Hurricane Sandy grantees was published by the Department on April 19, 2013 (78 FR 23578). This notice provides additional waivers and alternative requirements to several Hurricane Sandy grantees—the State of New York and the State of New Jersey.

II. Applicable Rules, Statutes, Waivers, and Alternative Requirements

The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) (HCD Act). Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

This section provides additional waivers and alternative requirements to several Hurricane Sandy grantees. For each waiver and alternative requirement described in this notice, the Secretary has determined that good cause exists and the action is not inconsistent with the overall purpose of the HCD Act. Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Under the requirements of the Appropriations Act, regulatory waivers must be published in the **Federal**

Register no later than five days before the effective date of such waiver.

1. *Waiver to permit some activities in support of the tourism industry (State of New York only).* In the notice published on April 19, 2013, the Department granted the State of New York a waiver to allow the State to fund certain tourism activities within the counties most impacted and distressed by Hurricane Sandy. This notice broadens that waiver to allow the State to fund certain tourism activities within counties receiving a Presidential disaster declaration in response to Hurricane Irene and/or Tropical Storm Lee.

Tourism in Irene/Lee-impacted counties generates approximately $14 billion each year. In the 30 counties affected by Hurricane Irene and Tropical Storm Lee, 11,000 businesses were impacted, accounting for 138,000 jobs. During this same time period, 13 of the impacted counties (located in the Adirondacks, Southern Tier and Central New York) experienced an economic loss of approximately $108 million in direct visitor spending and positive impact on state and local taxes. Without this waiver, the State estimates that the economic recovery in these areas will continue to significantly lag behind the pre-storm average growth rates, resulting in job loss and business closures.

Thus, HUD is broadening its previous waiver: 42 U.S.C. 5305(a) and 24 CFR 570.489(f) are waived only to the extent necessary to allow the State to expend up to $3 million (of the $30 million already approved by the Department) for the tourism industry to promote tourism in counties in receipt of a Presidential disaster declaration in response to Hurricane Irene and/or Tropical Storm Lee. Thus, this notice allows CDBG–DR funds to be used to promote a community or communities in general, provided the assisted activities are designed to support tourism within areas designated major disaster areas as a result of Hurricane Irene or Tropical Storm Lee. In addition, per the April 19, 2013, notice, the State of New York may use CDBG–DR funds to promote a community or communities in general, provided the assisted activities are designed to support tourism to the most impacted and distressed areas related to the effects of Hurricane Sandy. This waiver will expire at the end of the State's two-year expenditure period.

2. *Use of ''uncapped'' income limits (State of New Jersey only).* The State of New Jersey plans to initially target disaster recovery funds to low- and moderate-income households and has enaged in targeted outreach to ensure these households, particularly in high cost areas, can receive recovery funding. To ensure that all eligible households that are low- and moderate-income have equal access to resources, the State requested a waiver to allow all of the nine most impacted counties within the State to use HUD's ''uncapped income limits'' to better reflect the population of low- and moderate-income households in those areas.

The Quality Housing and Work Responsibility Act of 1998 (Title V of Pub. L. 105–276) enacted a provision that directed the Department to grant exceptions to at least 10 jurisdictions that are currently ''capped'' under HUD's low and moderate-income limits. Under this exception, a number of CDBG entitlement grantees may use ''uncapped'' income limits that reflect 80 percent of the actual median income for the area. Typically, average incomes (and thus the cost of living, including home values) in these entitlement grantees are significantly higher than in surrounding areas. By using uncapped income limits, grantees are better able to identify and assist those households considered to be low- to moderate-income for that particular area.

In the **Federal Register** notice dated March 5, 2013, the Department noted that the uncapped limits apply to disaster recovery activities funded pursuant to this notice in jurisdictions covered by the uncapped limits, including jurisdictions that receive disaster recovery funds from the State. While there are New Jersey counties that were most impacted by Hurricane Sandy that currently use the ''uncapped'' income limits, there are several that do not use the uncapped limits. The State's efforts to target CDBG resources to low- and moderate-income households means that those counties that already have the uncapped income limits (and thus more households that may be designated as low- and moderate-income) have a greater likelihood of receiving funding than counties that do not have the uncapped income limits despite having similar income demographics.

This notice imposes an alternative requirement to the applicable U.S. median family income cap on income limits that will apply to the State of New Jersey. The alternative requirement extends the exemption permitting the use of the uncapped income limits to all of the nine most impacted counties that were impacted by Hurricane Sandy within the State of New Jersey to ensure that households that are low- and moderate-income have equal opportunities to access funds. More information about this exemption can be found on HUD's Web site at *http://www.hud.gov/offices/cpd/systems/census/lowmod/uncapped.cfm.*

III. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the disaster recovery grants under this notice is 14.269.

IV. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or Speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–9339.

Dated: July 26, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs Programs.

[FR Doc. 2013–18643 Filed 8–1–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5681–N–31]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these

telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Office of Enterprise Support Programs, Program Support Center, HHS, Room 12–07, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Brenda Carignan, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 337, Washington, DC 20024, (202)–401–0787; *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St. SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *COE:* Mr. Scott Whiteford, Army Corps of Engineers, Real Estate, CEMP–CR, 441 G Street NW., Washington, DC 20314; (202) 761–5542; *GSA:* Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; *NASA:* Mr. Frank T. Bellinger, Facilities Engineering Division, National Aeronautics & Space Administration, Code JX, Washington, DC 20546, (202)–358–1124; *Navy:* Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426. (These are not toll-free numbers).

Dated: July 25, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 08/02/2013

Suitable/Available Properties

Building

Alabama

Anniston SSA Building
301 E. 13th St.
Anniston AL 36207
Landholding Agency: GSA
Property Number: 54201330002
Status: Excess
GSA Number: 4–G–AL–0790AA
Comments: 12,257 sf.; 11,927 rentable sf.; 59 parking spaces; office; 9+ months vacant; good conditions; Contact GSA for more info.

California

Upper Lake District Office
Bldg. #2004
10025 Elk Mountain Rd.
Upper Lake CA 95485
Landholding Agency: Agriculture
Property Number: 15201330011
Status: Excess
Comments: Off-site removal only; 1,959 sf.; office; poor conditions; asbestos, fluorescent lighting; Contact Agriculture for more info.

Building 1007
10025 Elk Mountain Rd.
Upper Lake CA 95485
Landholding Agency: Agriculture
Property Number: 15201330012
Status: Excess
Comments: Off-site removal only; 1,677 sf.; office; poor conditions; lead, asbestos and fluorescent lights; contact Agriculture for more info.

Colorado

John Martin Project Office
29955 County Rd.
Hasty CO 81044
Landholding Agency: COE
Property Number: 31201330001
Status: Unutilized
Comments: Off-site removal only; no future agency need; 17 yrs.-old; comfort station; 13′3″ x 0′ x 13′3″

John Martin Project Office
29955 County Rd.
Hasty CO 81044
Landholding Agency: COE
Property Number: 31201330002
Status: Unutilized
Comments: Off-site removal only; no future agency use; 62 yrs. old; 21′ x 0′ x 23′ for each

John Martin Project Office
29955 County Rd.
Hasty CO 81044
Landholding Agency: COE
Property Number: 31201330003
Status: Unutilized
Comments: Off-site removal only; no future agency use; 33 yrs. old; vault-type comfort station; 75″ x 75″ x 75″

Montana

Double Arrow Radio Bldg. #1246
Lolo Nat'l Forest
Seeley Ranger District MT
Landholding Agency: Agriculture
Property Number: 15201330013
Status: Excess
Comments: Off-site removal only; removal may be very difficult due to structure type; 80 sf.; shed; damage due to snow; contact Agriculture for more info.

Land

Florida

Two Residential Zoned Lots
4017 7th St. SW
Lehigh Acres FL 33976
Landholding Agency: COE
Property Number: 31201330004
Status: Unutilized
Comments: .05 acres lots; contact COE for more info.

New York

Radio Communication Link
Repeater Site
5979 Wagner Hill Rd.
Wheeler NY 14809
Landholding Agency: GSA
Property Number: 54201330004
Status: Excess
GSA Number: 1–NY–0981–AA
Directions: Landholding Agency: FAA; Disposal Agency: GSA
Comments: 7.473 acres; Contact GSA for more info.

Unsuitable Properties

Building

Florida

3 Buildings
Kennedy Space Center
KSC FL 32899
Landholding Agency: NASA
Property Number: 71201330009
Status: Unutilized
Directions: Modular Office Bldg.; Silver Recovery Bldg.; Sandblast Paint Fac.
Comments: Public access denied and no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

4 Buildings
Kennedy Space Center
KSC FL 32899
Landholding Agency: NASA
Property Number: 71201330010
Status: Unutilized
Directions: Temp. Bldg.; Sewage Treatment Plant #15; Microwave Tower; Waste Water Treatment Fac.
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

7 Buildings
Kennedy Space Center
KSC FL 32899
Landholding Agency: NASA
Property Number: 71201330011
Status: Unutilized
Directions: Foam Bldg.; Electrical Equipment Bldg. #3; Electrical Equipment #4; Hypergol Oxidizer Fac.; Storage Bldg.; Hypergol Fuel Fac.; Storage Bldg.
Comments: Public access denied and no alternative w/out compromising nat'l security
Reasons: Secured Area

3 Buildings
Kennedy Space Center
KSC FL 32899
Landholding Agency: NASA
Property Number: 71201330012
Status: Unutilized
Directions: SLF Optical Tracker Site B; SLF Optical Tracker Site E; Temp. Bldg.
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

7 Buildings
Hanger Rd.
CCAFS FL 32925
Landholding Agency: NASA
Property Number: 71201330013
Status: Unutilized
Directions: POL; POL Fac. Hanger AF; Hazardous Water Staging Shelter; Hazardous Water Staging Fac.; First Wash Bldg.; Thrust Vector Control Deserving Bldg.; Robot Wash Bldg.
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Helium Bottle Shed
77602 Samuel C. Phillip Pkwy.
CCAFS FL 32899
Landholding Agency: NASA
Property Number: 71201330014
Status: Unutilized
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Hazardous Waste
Staging Shelter
KSC FL 32899
Landholding Agency: NASA
Property Number: 71201330015
Status: Unutilized
Comments: Public access denied and no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Hypergol Module Processing, North
M7–0961 5th St.
KSC FL 32899
Landholding Agency: NASA
Property Number: 71201330016
Status: Unutilized
Comments: Public access denied and no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Hypergol Support Bldg.
M7–1061 6th St.
KSC FL 32899
Landholding Agency: NASA
Property Number: 71201330017
Status: Unutilized
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

3 Buildings
6th St. SE
KSC FL 32899
Landholding Agency: NASA
Property Number: 71201330018
Status: Unutilized
Directions: GHe and GH2 Storage; Heating Plant
Comments: Public access denied and no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Illinois

Rend Lake Project Office
11981 Rend City Rd.
Benton IL 62812
Landholding Agency: COE
Property Number: 31201330005
Status: Unutilized
Comments: Public access denied and no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Maryland

Shed (O17) [14765]
2401 Hawkins Point Rd.
Baltimore MD 21226
Landholding Agency: Coast Guard
Property Number: 88201330001
Status: Excess
Comments: Public access denied and no alternative method to gain access w/out compromising Nat'l security
Reasons: Secured Area

Texas

Admin. Support Facility Annex
(Bldg. 225)
NASA Johnson Space Ctr.
Houston TX 77058
Landholding Agency: NASA
Property Number: 71201330019
Status: Unutilized
Comments: Public access denied and no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Admin. Support Facility
(Bldg. 226)
2101 NASA Pkwy.
Houston TX 77058
Landholding Agency: NASA
Property Number: 71201330020
Status: Unutilized
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Vermont

Meyers Building
517 Welcome Center Rd.
Highgate Springs VT 05460
Landholding Agency: GSA
Property Number: 54201330006
Status: Excess
GSA Number: VT00006S
Comments: Documented Deficiencies: Severe structural damage; bldg. has significant (large) cracks in the foundation and masonry trim; threat to personal safety
Reasons: Extensive deterioration

Land

Maryland

Various Agricultural Fields
Naval Air Station Patuxent River
Patuxent/Webster MD
Landholding Agency: Navy

Property Number: 77201330007
Status: Underutilized
Directions: 132 acres at Webster Field Annex located in St. Indigoes and 414 acres located at NAS Patuxent River
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

[FR Doc. 2013–18301 Filed 8–1–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[XXXD5141GM DN18000000 DGM000000.000000 6100.257Z0]

Proposed Appointment to the National Indian Gaming Commission

ACTION: Notice.

SUMMARY: The Indian Gaming Regulatory Act provides for a three-person National Indian Gaming Commission. One member, the Chair, is appointed by the President with the advice and consent of the Senate. Two associate members are appointed by the Secretary of the Interior. Before appointing members, the Secretary is required to provide public notice of a proposed appointment and allow a comment period. Notice is hereby given of the proposed appointment of Jonodev Chaudhuri as an associate member of the National Indian Gaming Commission for a term of 3 years.

DATES: Comments must be received before September 3, 2013.

ADDRESSES: Comments should be submitted to the Director, Office of the Executive Secretariat, United States Department of the Interior, 1849 C Street NW., Mail Stop 7229, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Eric Shepard, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005; telephone (202) 754–2565.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.,* established the National Indian Gaming Commission (Commission), composed of three full-time members. Commission members serve for a term of 3 years. The Chair is appointed by the President with the advice and consent of the Senate. The two associate members are appointed by the Secretary of the Interior. Before appointing an associate member to the Commission, the Secretary is required to ''publish in the **Federal Register** the name and other information the Secretary deems pertinent regarding a nominee for membership on the commission and . . . allow a period of not less than thirty days for receipt of public comments.'' 25 U.S.C. 2704(b)(2)(B).

The Secretary proposes to appoint Jonodev Chaudhuri as an associate member of the Commission for a term of 3 years. Mr. Chaudhuri is well qualified to be a member of the National Indian Gaming Commission by virtue of his extensive background and experience in a broad spectrum of Native American issues.

As an attorney in private practice and a judge on four different tribal courts, Mr. Chaudhuri has worked on issues related to gaming, economic development, and social welfare. His work as a community organizer and pro bono counsel for the Native American Community Organizing Project has given him experience with health care, housing, educational, and other social service needs of Native Americans. Mr. Chaudhuri also has years of experience in these areas as a teacher and presenter and further experience as a senior counselor to the Assistant Secretary for Indian Affairs.

Mr. Chaudhuri's wide experience in community service, legal affairs, and organizational administration make him a highly qualified candidate for membership on the National Indian Gaming Commission. His broad perspective as a result of this experience will enrich the Commission's deliberations and contribute to informed decisions that promote economic well-being.

Mr. Chaudhuri does not have any financial interests that would make him ineligible to serve on the Commission under 25 U.S.C. 2704(b)(5)(B) or (C).

Any person wishing to submit comments on this proposed appointment of Jonodev Chaudhuri may submit written comments to the address listed above. Comments must be received by September 3, 2013.

Dated: July 26, 2013.

Sally Jewell,

Secretary.

[FR Doc. 2013–18601 Filed 8–1–13; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Draft National Spatial Data Infrastructure Strategic Plan; Comment Request

AGENCY: U.S. Geological Survey, Interior.

ACTION: Request for public comment.

SUMMARY: The Federal Geographic Data Committee (FGDC) is soliciting public comments on the draft strategic plan for the National Spatial Data Infrastructure (NSDI). The draft strategic plan, along with instructions for submitting comments, is posted at: *www.fgdc.gov/nsdi-plan.* Comments should be submitted by August 21, 2013.

The FGDC is the interagency committee that promotes the coordinated use, sharing and dissemination of geospatial data in the United States. The FGDC operates under the authority of Office of Management and Budget (OMB) Circular A–16 and Executive Order 12906. One of the FGDC's responsibilities under Circular A–16 is to ''prepare and maintain a strategic plan for the development and implementation of the NSDI.'' Executive Order 12906 describes the NSDI as ''the technology, policies, standards, and human resources necessary to acquire, process, store, distribute, and improve utilization of geospatial data.''

The draft NSDI strategic plan has been developed with inputs from a variety of sources, including FGDC member agencies, the National Geospatial Advisory Committee, and geospatial partner organizations. The plan describes a broad national vision for the NSDI, and includes goals and objectives for the Federal government's role in continued sustainable development of the NSDI. Following the public comment period, a revised draft of the plan will be prepared for final review and adoption by the FGDC Steering Committee. Following adoption of the strategic plan, the FGDC will develop more detailed project plans for the goals and objectives in the strategic plan.

DATES: Comments should be submitted by August 21, 2013.

ADDRESSES: You may provide comments by either of the following methods:

- Submit comments electronically to: *nsdicomments@fgdc.gov.*
- Submit comments by mail to: Federal Geographic Data Committee, 12201 Sunrise Valley Drive, Mail Stop 590, Reston, VA 20192.

Instructions for submitting comments are posted at: *www.fgdc.gov/nsdi-plan.*

FOR FURTHER INFORMATION CONTACT: John Mahoney, U.S. Geological Survey (206–220–4621).

SUPPLEMENTARY INFORMATION: Additional information about the FGDC is available at *www.fgdc.gov.* Additional information about the NSDI strategic plan is available at: *www.fgdc.gov/nsdi-plan.*

Dated: July 26, 2013.

David Newman,

Federal Register Liaison.

[FR Doc. 2013–18637 Filed 8–1–13; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[13X LLWYR02000 L14300000.ER0000 242A.00]

Change in Dates of Seasonal Closure of Public Land in the Bald Ridge Area, Park County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given to change the dates of the seasonal closure of public land in the Bald Ridge Area that was published in the **Federal Register** on Thursday, August 5, 1999 (64 FR 42711). The previous closure was in effect from December 15 through April 30 each winter and spring season to all use, except for specifically authorized vehicles. Pursuant to this Notice, the Bald Ridge area located south of the Clarks Fork of the Yellowstone River and west and north of Hogan Reservoir of Park County, Wyoming on public land administered by the Bureau of Land Management (BLM) Cody Field Office, is now closed from January 1 through April 30 of each winter and spring season to all use (such as human presence, hiking, horseback riding, mountain bike riding, cross-country skiing, and all motorized use), except for specifically authorized activities. The total acreage of this closure is 6,036 acres. This action is being taken for resource protection of essential wintering habitat for elk and mule deer. No access into this area will be allowed unless permitted by the Authorized Officer (BLM, Cody Field Manager).

DATES: This change of seasonal closure dates is effective March 7, 2013, and will remain in effect until modified or rescinded by the Authorized Officer.

FOR FURTHER INFORMATION CONTACT: Michael Stewart, Field Manager, BLM, Cody Field Office at:

- *Telephone:* 307–578–5900;
- *Email: m75stewa@blm.gov*
- *Address:* 1002 Blackburn Street, Cody, WY 82414

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Cody Field Office is responsible for the management of essential wildlife habitat in the Bald Ridge area of the Absaroka Front and other crucial habitat areas located throughout the Bighorn Basin. These essential habitat areas and management thereof are covered under the Cody Resource Management Plan (RMP), which was signed on November 9, 1990. ''Seasonal restrictions will be applied as appropriate to surface-disturbing and disruptive activities and land uses on big game crucial habitat, including wintering ranges and elk calving areas.'' (Cody RMP, p. 40).

The Bald Ridge area is crucial wintering habitat for big game. Increasing visitor activity such as horseback riding, hiking and antler hunting has caused impacts to the wintering herds. These activities are stressing game animals during a period when the animals are most susceptible to stress-related health effects that could cause death. These activities also force the herds to be displaced from their winter habitat. The Cody Field Office published a Notice in the **Federal Register** on Friday, March 29, 1996 (61 FR 14159), that closed the Bald Ridge area from December 15 through April 30 each winter and spring season. The Cody Field Office subsequently extended the seasonal closure in a second Notice in the **Federal Register** on Thursday, August 5, 1999 (64 FR 42711).

The December 15 closure date was largely based on the ending date of an elk hunting season as established by the Wyoming Game and Fish Department. In recent years the Wyoming Game and Fish Department determined it was necessary to harvest additional elk in the Bald Ridge area and extended the end of the elk hunting season to December 31. At the request of the Wyoming Game and Fish Department, members of the public, and an adjoining private landowner, the Cody Field Office determined it was necessary for the seasonal closure of the Bald Ridge area to coincide with the December 31 end of the elk hunting season. The BLM Cody Field Office analyzed the date change in Environmental Assessment WY–020–EA13–20. A Finding of No Significant Impact (FONSI) was signed on March 7, 2013. Subsequently, a Decision Record was signed on March 7, 2013.

The following described BLM-administered lands south of the Clarks Fork of the Yellowstone River and west of Hogan Reservoir are included in this seasonal closure:

Sixth Principle Meridian, Wyoming

T. 56 N., R. 103 W.,
Tracts 81 and 82, tracts 88 to 97, inclusive, tracts 107 to 109, inclusive, tracts 113 to 116, inclusive, and tracts 119 to 122, inclusive;
Sec. 7, SE¼SE¼;
Sec. 8, SW¼SW¼;
Sec. 16, lots 5 and 11;
Sec. 17, lots 1 to 6, inclusive, and W½W½;
Sec. 18;
Sec. 19;
Sec. 20;
Sec. 21, lots 1 to 4, inclusive, W½NW¼, SW¼, and SW¼SE¼;
Sec. 22, lot 7;
Sec. 27, lots 1, 2, and 8;
Sec. 28, lots 1 to 6, inclusive, N½, and NW¼SE¼;
Sec. 29, lots 1 to 3, inclusive, N½, and W½SW¼;
Sec. 30;
Sec. 31, lots 5 to 7, inclusive, N½NE¼, E½NW¼, and NE¼SW¼;
Sec. 32, lots 4, 5, 7, and 8, and NW¼NW¼;
Sec. 33, lots 1 to 8, inclusive, W½SW¼, and E/12SE¼.

Authority for closure and restriction orders is provided under 43 CFR subpart 8341.2 (a and b), 8364.1. Violations of this closure are punishable by a fine not to exceed $1500 and (or) imprisonment not to exceed 12 months.

Larry Claypool,

Acting State Director.

[FR Doc. 2013–18565 Filed 8–1–13; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–540]

Digital Trade in the U.S. and Global Economies, Part 2; Proposed Information Collection; Comment Request; Digital Trade 2 Questionnaire

AGENCY: United States International Trade Commission

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the U.S. International Trade Commission (Commission) hereby gives notice that it plans to submit a request for approval of a questionnaire to the Office of Management and Budget for review and requests public comment on its draft collection.

DATES: To ensure consideration, written comments on the questionnaire must be submitted on or before October 1, 2013.

ADDRESSES: Direct all written comments to James Stamps, Project Leader, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436 (or via email at *james.stamps@usitc.gov*).

ADDITIONAL INFORMATION: Copies of the questionnaire and supporting investigation documents may be obtained from project leader James Stamps (*james.stamps@usitc.gov* or 202–205–3227) or deputy project leader David Coffin (*david.coffin@usitc.gov* or 202–205–2232). Supporting documents may also be downloaded from the Commission Web site at *http://www.usitc.gov/research_and_analysis/What_We_Are_Working_On.htm.* Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Web site (http://www.usitc.gov). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Purpose of Information Collection: The information requested by the questionnaire is for use by the Commission in connection with Investigation No. 332–540, *Digital Trade in the U.S. and Global Economies, Part 2,* instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the Senate Committee on Finance (Committee). The Committee requested that this investigation include a survey of U.S. firms in selected industries particularly involved in digital trade. The Commission expects to deliver its report to the Committee by July 14, 2014.

Summary of Proposal

(1) *Number of forms submitted:* 1.

(2) *Title of form:* Digital Trade in the U.S. and Global Economies, Part 2 Questionnaire.

(3) *Type of request:* New.

(4) *Frequency of use:* Industry questionnaire, single data gathering, scheduled for 2013.

(5) *Description of respondents:* Companies in industries particularly involved in digital trade.

(6) *Estimated number of respondents:* 15,000.

(7) *Estimated total number of hours to complete the questionnaire per respondent:* 3 hours.

(8) Information obtained from the questionnaire that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Senate Committee on Finance has directed the Commission to produce a report that: (1) Estimates the value of U.S. digital trade, and the potential growth of this trade; (2) provides insight into the broader linkages and contributions of digital trade to the U.S. economy; (3) presents case studies that examine the importance of digital trade to selected U.S. industries that use or produce such goods and services; and (4) examines the effect of notable barriers and impediments to digital trade on selected industries and the broader U.S. economy. The Commission will base its report on a review of available data and other information, including the collection of primary data through a survey of U.S. firms in industries particularly involved in digital trade.

II. Method of Collection

Respondents will be mailed a letter directing them to download and fill out a form-fillable PDF questionnaire. Once complete, respondents may submit it by uploading it to a secure webserver, emailing it to the study team, faxing it, or mailing a hard copy to the Commission.

III. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary; (2) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

The draft questionnaire and other supplementary documents may be downloaded from the USITC Web site at *http://www.usitc.gov/332540comments.*

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

By order of the Commission

Issued: July 30, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–18685 Filed 8–1–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Certain Welded Large Diameter Line Pipe From Japan; Investigation No. 731–TA–919 (Second Review); Notice of Commission Determination To Conduct a Portion of the Hearing In Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing.

SUMMARY: Upon the timely request of respondents, the Commission has determined to conduct a portion of its hearing in the above-captioned investigation scheduled for August 1, 2013, in camera. See Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3041. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–3105.

SUPPLEMENTARY INFORMATION: The Commission believes that respondents JFE Steel Corporation and Nippon Steel & Sumitomo Metal Corporation have justified the need for a closed session. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by domestic producers and by respondents, with questions from the Commission. In addition, the hearing will include a 10-minute in camera session for a confidential presentation by respondents. Each session will be followed by an in camera rebuttal presentation by domestic producers and questions from the Commission relating to the BPI. During the in camera session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation and the respondent witnesses (Atsuhito

Takeuchi from JFE Steel Corporation and Kenji Nakayama from Nippon Steel & Sumitomo Metal Corporation) who will be testifying at the in camera session. See 19 CFR 201.35(b). The time for the parties' presentations and rebuttals in the in camera session will be taken from their respective overall allotments for the hearing. All persons planning to attend the in camera portions of the hearing should be prepared to present proper identification.

Authority: The Acting General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in his opinion, a portion of the Commission's hearing in Certain Welded Large Diameter Line Pipe from Japan, Inv. No. 731–TA–919 (Second Review), may be closed to the public to prevent the disclosure of BPI. Notwithstanding Commission Rule 201.35(a) (19 CFR 201.35(a)), seven-day advance notice of the determination to conduct a portion of the hearing in camera is not possible. Public notice is consequently being issued at the earliest practicable time pursuant to Commission Rule 201.35(c)(2) (19 CFR 201.35(c)(2)).

Issued: July 30, 2013.
By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–18646 Filed 8–1–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1105–1106 (Review)]

Lemon Juice From Argentina and Mexico

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that termination of the suspended antidumping duty investigation on lemon juice from Argentina would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] The Commission also determines that termination of the suspended antidumping duty investigation on lemon juice from Mexico would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on August 1, 2012 (77 FR 45653) and determined on November 5, 2012 that it would conduct full reviews (77 FR 67833, November 14, 2012). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on December 5, 2012 (77 FR 72384). The hearing was held in Washington, DC, on May 16, 2013, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission completed and filed its determinations in these reviews on July 26, 2013. The views of the Commission are contained in USITC Publication 4418 (July 2013), entitled *Lemon Juice from Argentina and Mexico: Investigation Nos. 731–TA–1105–1106 (Review)*.

By order of the Commission.
Issued: July 26, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–18645 Filed 8–1–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Readium Foundation

Notice is hereby given that, on July 10, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Readium Foundation (''Readium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are International Digital Publishing Forum (IDPF), Seattle, WA; Datalogics, Inc., Chicago, IL; Evident Point Software Corp., Richmond, British Columbia, CANADA; and Bluefire Productions, LLC, Seattle, WA.

The general areas of Readium's planned activities are to engage in some or all of the following activities: (a) Advance the creation, evolution, promotion, and support of software tools supporting the EPUB open standard environment (''Software''); (b) promote the development and adoption of open, accessible standards and specifications relating thereto (''Specifications''); (c) promote such Specifications and Software worldwide; and (d) undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above. Membership in the venture remains open, and the venture intends to file additional written notifications disclosing all changes in membership.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–18610 Filed 8–1–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meetings

TIME AND DATE: 12:00 p.m., Thursday, August 8, 2013.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC

STATUS: Closed.

MATTERS TO BE CONSIDERED: Determination on three original jurisdiction cases.

CONTACT PERSON FOR MORE INFORMATION: Patricia W. Moore, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, D.C . 20530, (202) 346–7001.

Dated: July 30, 2013.

Rockne J. Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 2013–18799 Filed 7–31–13; 4:15 pm]

BILLING CODE 4410–31–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Thursday, August 8, 2013.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Daniel R. Pearson made a negative determination with respect to the suspended investigation on lemon juice from Argentina.

STATUS: Open.

MATTERS TO BE CONSIDERED: Approval of May 7, 2013 minutes; reports from the Chairman, the Commissioners, and senior staff.

CONTACT PERSON FOR MORE INFORMATION: Patricia W. Moore, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, D.C . 20530, (202) 346–7001.

Dated: July 30, 2013.

Rockne J. Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 2013–18798 Filed 7–31–13; 4:15 pm]

BILLING CODE 4410–31–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–089]

National Environmental Policy Act; Santa Susana Field Laboratory

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Availability of the Draft Environmental Impact Statement (DEIS) for Demolition and Environmental Cleanup Activities for the NASA-administered portion of the Santa Susana Field Laboratory (SSFL), Ventura County, California.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321 et seq.), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA's NEPA policy and procedures (14 CFR Part 1216, subpart 1216.3), NASA has prepared a DEIS for demolition and cleanup activities at SSFL in Ventura County, California. Furthermore, pursuant to 36 CFR Section 800.8(c) of the National Historic Preservation Act (NHPA), NASA will use the NEPA process and the DEIS it produces to comply with Section 106 of NHPA in lieu of the procedures set forth in Sections 800.3 through 800.6.

DATES: Interested parties are invited to submit comments on environmental issues and concerns, preferably in writing, within forty-five (45) calendar days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's Notice of Availability of the DEIS. Once known, this date will be published on the project Web site address listed below. *http://www.nasa.gov/agency/nepa/news/SSFL.html.*

ADDRESSES: Comments submitted by mail should be addressed to Allen Elliott, SSFL Project Director, NASA MSFC AS01, Building 4494, Huntsville, AL 35812. Comments may be submitted via email to *msfc-ssfl-eis@mail.nasa.gov.*

The DEIS may be reviewed at the following locations:

1. Simi Valley Library, 2969 Tapo Canyon Road, Simi Valley, CA 93063 Web site: *http://simivalleylibrary.org/home/,* Phone: *(805) 526–1735.*
2. Platt Library, 23600 Victory Blvd., Woodland Hills, CA 91367, Web site: *http://www.lapl.org/branches/platt,* Phone: *(818) 340–9386.*
3. California State University, Northridge Oviatt Library, 18111 Nordhoff Street, 2nd Floor, Room 265 Northridge, CA 91330, Web site: *http://library.csun.edu,* Phone: *(818) 677–2285.*
4. Department of Toxic Substances Control, 9211 Oakdale Avenue, Chatsworth, CA 91311, Web site: *http://www.dtsc.ca.gov,* Phone: *(818) 717–6521.*

A limited number of hard copies of the DEIS are available, on a first-request basis, by contacting the NASA point of contact listed under **FOR FURTHER INFORMATION CONTACT**. The DEIS is available on the internet in Adobe® portable document format at *http://www.nasa.gov/agency/nepa/news/SSFL.html.* The **Federal Register** Notice of Intent to prepare the DEIS, issued in the **Federal Register** on July 6, 2011, is also available on the Internet at: *http://ssfl.msfc.nasa.gov/public-involvement/.*

FOR FURTHER INFORMATION CONTACT: Allen Elliott, SSFL Project Director, by phone at (256) 544–0662 or by email at *msfc-ssfl-eis@mail.nasa.gov.* Additional information about NASA's SSFL site, the proposed demolition and cleanup activities, and the associated EIS planning process and documentation (as available) may be found on the internet at *http://ssfl.msfc.nasa.gov.*

SUPPLEMENTARY INFORMATION:

Decision To Be Made

This DEIS informs NASA decision makers, regulating agencies, and the public of the potential environmental consequences of the proposed demolition of SSFL buildings and structures and the proposed technologies for groundwater and soil remediation, as implemented through the Proposed Action. This DEIS analyzes a range of remedial technologies that might be implemented to achieve the proposed groundwater and soil remediation goals. NASA will use the DEIS analysis to consider the potential environmental, economic, and social impacts from the Proposed Action. On the basis of the DEIS findings, NASA will issue a Record of Decision (ROD) documenting the findings. The ROD will further identify which buildings will be demolished to support disposition of the property, and which remedial technology(ies) would will be applied to meet the soil cleanup and groundwater quality goals.

The purpose of this notice is to apprise interested agencies, organizations, tribal governments, and individuals of the availability of the DEIS and to invite comments on the document. NASA will hold public meetings as part of the DEIS review process.

Site Description

The SSFL site is 2,850 acres located in Ventura County, California, approximately seven miles northwest of Canoga Park and approximately 30 miles northwest of downtown Los Angeles. SSFL is composed of four areas known as Areas I, II, III, and IV and two unnumbered areas known as the ''undeveloped land.'' NASA administers 41.7 acres within Area I and all 409.5 acres of Area II. The Boeing Company manages the remaining 2,398.8 acres within Areas I, III, and IV, and the two undeveloped areas.

Since the mid-1950s, when the two federally owned areas were owned by the U.S. Air Force, this site has been used for developing and testing rocket engines. Four test stand complexes were constructed in Area II between 1954 and 1957 named Alfa, Bravo, Coca, and Delta. Area II and the LOX Plant portion of Area I were acquired by NASA from the U.S. Air Force in the 1970s. These test stands and related ancillary structures have been found to have historical significance based on the historic importance of the engine testing and the engineering and design of the structures.

The NASA-administered areas of SSFL also contain cultural resources not related to rocket development. SSFL is located near the crest of the Simi Hills that are part of the Santa Monica Mountains running east-west across Southern California. The diverse terrain consists of ridges, canyons, and sandstone rock outcrops. The region was occupied by Native Americans from the earliest Chumash, Tongva, and Tataviam cultures. NASA has conducted several previous surveys to locate archaeological and architectural resources within its portion of the SSFL. As a result, NASA has identified one historic property, the Burro Flats Painted Cave, that is listed on the National Register of Historic Places

(NRHP), as well as multiple buildings and structures that are either individually eligible for listing on the NRHP or are elements of NRHP-eligible historic districts containing multiple architectural resources.

Previous environmental sampling on the NASA-administered property indicates that metals, dioxins, polychlorinated biphenyls (PCBs), volatile organics, and semivolatile organics are present in the soils and upper groundwater (known as the Surficial Media Operable Unit). Volatile organics, metals, and semivolatile organics are also present in the deeper groundwater (known as the Chatsworth Formation Operable Unit).

Environmental Commitments and Associated Environmental Review

Rocket engine testing has been discontinued at these sites and the property has been excessed to the General Services Administration (GSA). GSA has conditionally accepted the Report of Excess pending (i) NASA's certification that all action necessary to protect human health and the environment with respect to hazardous substances on the property has been taken or receipt of EPA's written concurrence that an approved and installed remedial design is operating properly and successfully; OR (ii) the Governor's concurrence in the suitability of the property for transfer per CERCLA Section 120(h)(3)(C).

In 2007, a Consent Order among NASA, Boeing, the Department of Energy (DOE), and Department of Toxic Substances Control (DTSC) for the State of California was signed addressing the demolition of certain infrastructure and environmental cleanup of SSFL. NASA entered into an Administrative Order on Consent (AOC) for Remedial Action with DTSC on December 6, 2010, ''to further define and make more specific NASA's obligations with respect to the cleanup of soils at the Site.'' Based on the 2010 AOC, NASA is required to complete a federal environmental review pursuant to NEPA. ''An EIS is being prepared by NASA to include demolition of site infrastructure and soil cleanup (pursuant to the AOC), and groundwater remediation within Area II and a portion of Area I (Liquid Oxygen [LOX] Plant) of SSFL (pursuant to the 2007 Consent Order).'' As part of the environmental review process, certain studies have been or are being completed, to characterize the existing conditions and to inform the analysis and consultation. These include surveys for wildlife, critical habitat, rare plants, wetlands, and archaeological and cultural resources. The findings of these studies are being incorporated into the DEIS.

Alternatives

To prepare SSFL for disposition, NASA describes the demolition of SSFL structures and cleanup of the site necessary to meet only the strictest cleanup alternative, as dictated by the 2007 Consent Order and the 2010 AOC requirements, and the ''No Action'' alternative required by NEPA. During the Scoping Process, per the standard consistent with the alternatives evaluated under previous Superfund or Resource Conservation and Recovery Act (RCRA) cleanup processes, NASA originally proposed to evaluate a range of cleanup standard levels, including the ''Cleanup to Background'' alternative required by the AOC, the ''No Action'' alternative required by NEPA, and other alternatives that are, consistent with the potential future use of the land. The latter alternatives include soil cleanup requirements to suburban residential, to industrial, and to recreational cleanup standards. Based on comments from some members of the public, DTSC, Senator Boxer, and guidance from the White House's Council on Environmental Quality, the DEIS now considers only the strictest ''Cleanup to Background'' and the least effective ''No Action'' alternatives. All other cleanup alternatives, consistent with both the Scoping Process and the potential future use of the land, were specifically removed from the DEIS.

The DEIS will consider a range of alternative technologies that meet NASA's objectives to clean up soil and groundwater contamination at the portion of the SSFL site administered by NASA. Implementation of this Proposed Action would occur by implementing one Demolition Alternative and one or more Cleanup Technologies, from the following: (1) Soil Cleanup Technologies: Excavation and Offsite Disposal, Soil Washing, Soil Vapor Extraction, Ex Situ Treatment Using Land Farming, Ex Situ Treatment Using oxidation, In Situ Chemical Oxidation, In Situ Anaerobic or Aerobic Biological Treatment; (2) Groundwater Treatment Technologies: Pump and Treat, Vacuum Extraction, Heat Driven Extraction, In situ Chemical Oxidation, In situ Enhanced Bioremediation, and Monitored Natural Attenuation.

NEPA requires analysis of the ''No Action'' alternative which in this case means no environmental cleanup at the site and/or no demolition of test stands and ancillary structures on the NASA-administered property.

GSA will conduct a separate environmental review under NEPA for the action of transferring the land out of NASA stewardship. The options could include reuse or redevelopment of the property under local, state, or private ownership.

DTSC is preparing a separate Environmental Impact Report (EIR) under the California Environmental Quality Act, which requires that State agencies give major consideration, when regulating public and private activities, to preventing environmental degradation and to identifying environmentally superior mitigations and alternatives, when possible. This State-led environmental review must identify the potentially significant environmental effects of a project and environmentally preferable alternatives to implementing the project. The EIR also indicates the manner in which significant effects could be mitigated or avoided. DTSC will analyze the potential environmental effects of environmental cleanup activities occurring SSFL-wide by NASA, Boeing, and DOE. NASA and DTSC have coordinated during these processes to maintain consistency pertaining to the analysis of the NASA-administered demolition and remedial activities. Cumulative effects of the proposed Boeing, DOE, and NASA demolition and remedial activities at SSFL will be considered. The DTSC EIR is likely to be prepared following publication of NASA's EIS, and could incorporate some of NASA's EIS analysis. A programmatic EIR will be developed that evaluates the remedial activities that will be conducted at SSFL by NASA, Boeing, and DOE, as well as project-specific EIRs that evaluate the localized remedial activities.

Public Meetings

NASA plans to hold two public meetings to receive comments on the DEIS regarding alternatives and environmental issues to be considered in the DEIS. The public meetings are scheduled as follows:

1. Corporate Pointe, West Hills, CA, Tuesday, August 27, 2013 from 2:00–4:00 p.m. at the Auditorium, 8413 Fallbrook Avenue, West Hills, CA 91304

2. Corporate Pointe, West Hills, CA, Wednesday, August 28, 2013 from 6:00–8:00 p.m. at the Auditorium, 8413 Fallbrook Avenue, West Hills, CA 91304.

NASA will consider all comments received in developing its Final EIS; comments received and responses to comments will be included in the Final document. In conclusion, written public input on environmental issues and

concerns associated with NASA's cleanup of SSFL are hereby requested.

Olga M. Dominguez,

Assistant Administrator, Office of Strategic Infrastructure.

[FR Doc. 2013–18700 Filed 8–1–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–086]

Notice of Intent to Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the invention described and claimed in U.S. Patent Application Serial No. 13/424,898 entitled Rapidly Deployed Modular Telemetry System to Orbital Telemetry having its principal place of business in Huntsville, AL. The patent rights in these inventions as applicable have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Mr. James J. McGroary, Chief Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–0013.

FOR FURTHER INFORMATION CONTACT: Mr. Sammy A. Nabors, Technology Transfer Office/ZP30, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5226. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–18667 Filed 8–1–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–088]

Notice of Intent to grant exclusive license

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice to Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e), and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the invention described and claimed in NASA Case Number LAR–16324–1 entitled ''Self-Activating System and Method for Alerting When an Object or a Person is Left Unattended,'' U.S. Patent Number 6,714,132; and LAR–16324–2 entitled ''Self-Activating System and Method for Alerting When an Object or a Person is Left Unattended,'' U.S. Patent Number 7,106,203, to RF Solutions, LLC having its principal place of business in Williamsburg, Virginia. The patent rights have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Andrea Warmbier, Patent Attorney, Office of Chief Counsel, NASA Langley Research Center, MS 30, Hampton, VA 23681, (757) 864–7686 (phone), (757) 864–9190 (fax).

FOR FURTHER INFORMATION CONTACT: Andrea Warmbier, Patent Attorney, Office of Chief Counsel, NASA Langley Research Center, MS 30, Hampton, VA 23681, (757) 864–7686; Fax: (757) 864–9190. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–18669 Filed 8–1–13; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0157]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 327, ''Special Nuclear Material (SNM) and Source Material Physical Inventory Summary Report'' and NUREG/BR–0096, ''Instructions and Guidance for Completing Physical Inventory Summary Reports.''

2. *Current OMB approval number:* 3150–0139.

3. *How often the collection is required:* Certain licensees possessing strategic SNM are required to report

inventories every six months. Licensees possessing SNM of moderate strategic significance must report every nine months. Licensees possessing SNM of low strategic significance must report annually, except two licensees must report their dynamic inventories every two months and a static inventory on an annual basis.

4. *Who is required or asked to report:* Fuel facility licensees possessing special nuclear material, i.e., enriched uranium, plutonium or U–233.

5. *The number of annual respondents:* 7.

6. *The number of hours needed annually to complete the requirement or request:* 140 hours (4 hours per response × 35 responses).

7. *Abstract:* NRC Form 327 is submitted by fuel facility licensees to account for special nuclear material. The data is used by NRC to assess licensee material control and accounting programs and to confirm the absence of (or detect the occurrence of) SNM theft or diversion. NUREG/BR–0096 provides specific guidance and instructions for completing the form in accordance with the requirements appropriate for a particular licensee.

Submit, by October 1, 2013, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.*

The document will be available on the NRC's home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2013–0157. You may submit your comments by any of the following methods: Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2013–0157. Mail comments to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 29th day of July, 2013.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2013–18580 Filed 8–1–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0173]

Proposed Safety Evaluation for Plant-Specific

Technical Specifications Task Force Traveler, ''Generic Letter 2008–01, Managing Gas Accumulation''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is requesting public comment on the proposed model safety evaluation (SE) for plant-specific adoption of Technical Specifications (TS) Task Force (TSTF) Traveler TSTF–523, Revision 2, ''Generic Letter 2008–01, Managing Gas Accumulation.''

DATES: Comments msut be filed no later than September 3, 2013. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document that the NRC possesses and are publicly available by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0173. You may submit comments by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0173. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422 or email: *Carol.Gallagher@nrc.gov.*

• *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN 06A, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mrs. Michelle C. Honcharik, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone: 301–415–1774 or email: *Michelle.Honcharik@nrc.gov.* For technical questions please contact Mr. Matthew Hamm, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone: 301–415–1472 or email: *Matthew.Hamm@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0173 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0173.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Technical Specification Task Force Traveler—TSTF–523, Revision 2, includes a model application and is available under ADAMS Accession Number ML13053A075. The proposed model SE for plant-specific adoption of TSTF–523, Revision 2, is also available under ADAMS Accession Number ML13113A181.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One

White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0173 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Background

Technical Specification Task Force Traveler—TSTF–523, Revision 2, is applicable to all power plants. The proposed change revises the Standard Technical Specifications (STS), NUREG–1430, ''Standard Technical Specifications Babcock and Wilcox Plants,'' NUREG–1431, ''Standard Technical Specifications Westinghouse Plants,'' NUREG–1432, ''Standard Technical Specifications Combustion Engineering Plants,'' NUREG–1433, ''Standard Technical Specifications General Electric Plants BWR/4,'' and NUREG–1434, ''Standard Technical Specifications General Electric Plants, BWR/6.'' This STS improvement is part of the consolidated line item improvement process (CLIIP).

Specifically, the proposed change modifies the existing Surveillance Requirements (SRs) related to gas accumulation for the emergency core cooling system and adds new SRs on entrained gas to the specifications governing the decay heat removal (also called the residual heat removal and shutdown cooling systems) and the containment spray systems. Similar changes are made to the existing SR on the reactor core isolation cooling system to maintain consistency within the STS. Existing SRs are revised to facilitate the performance of the proposed gas accumulation SR. The TS Bases are revised to reflect the change to the SRs. The proposed change captures the on-going activities related to system Operability needed to address the concerns in the Generic Letter (GL) 2008–01, ''Managing Gas Accumulation in Emergency Core Cooling, Decay Heat Removal, and Containment Spray Systems,'' dated January 11, 2008 (ADAMS Accession No. ML072910759).

Additional Details

This notice provides an opportunity for the public to comment on proposed changes to the STS after a preliminary assessment and finding by the NRC staff that the agency will likely offer the changes for adoption by licensees. This notice solicits comment on proposed changes to the STS, which if implemented by a licensee will modify the plant-specific TS. The NRC staff will evaluate any comments received for the proposed changes and reconsider the changes or announce the availability of the changes for adoption by licensees as part of the CLIIP. Licensees opting to apply for this TS change are responsible for reviewing the NRC staff's SE and the applicable technical justifications, providing any necessary plant-specific information, and assessing the completeness and accuracy of their license amendment request (LAR). The NRC will process each amendment application responding to the notice of availability according to applicable NRC rules and procedures.

The proposed change does not prevent licensees from requesting an alternate approach or proposing changes other than those proposed in TSTF–523, Revision 2. However, significant deviations from the approach recommended in this notice or the inclusion of additional changes to the license require additional NRC staff review. This may increase the time and resources needed for the review or result in NRC staff rejection of the LAR. Licensees desiring significant deviations or additional changes should instead submit an LAR that does not claim to adopt TSTF–523, Revision 2.

Dated at Rockville, Maryland, this 9th day of July 2013.

For the Nuclear Regulatory Commission,

Anthony J. Mendiola,

Chief, Licensing Processes Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–18677 Filed 8–1–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0195]

Software Unit Testing for Digital Computer Software Used in Safety Systems of Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Revision to Regulatory Guide; Issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a revised regulatory guide (RG), revision 1 of RG 1.171, ''Software Unit Testing for Digital Computer Software Used in Safety Systems of Nuclear Power Plants.'' This RG endorses American National Standards Institute/Institute of Electrical and Electronics Engineers (ANSI/IEEE) Standard (Std.) 1008–1987, ''IEEE Standard for Software Unit Testing'' with the clarifications and exceptions stated in Section C, ''Staff Regulatory Position'' in the RG. ANSI/IEEE Std. 1008–1987, which was reaffirmed in 2002, describes a method acceptable to the NRC staff for complying with NRC regulations for promoting high functional reliability and design quality in the software used in safety systems of nuclear power plants.

ADDRESSES: Please refer to Docket ID NRC–2012–0195 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0195. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: Carol.Gallagher@nrc.gov.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 1 of RG 1.171 is available in ADAMS under

Accession No. ML13004A375. The regulatory analysis may be found in ADAMS under Accession No. ML103120752.

• *NRC's PDR:* You may examine for free or purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

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FOR FURTHER INFORMATION CONTACT: Mark Orr, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–251–7495; email: *Mark.Orr@NRC.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing RG in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

II. Further Information

Revision 1 of RG 1.171 was issued with a temporary identification as Draft Regulatory Guide, DG–1208 on August 22, 2012 (77 FR 50722) for a 60-day public comment period. The public comment period closed on November 23, 2012. Multiple public comments were received and addressed by the NRC staff. These comments and the NRC staff responses are available in ADAMS under Accession number ML13004A370.

Revision 1 of RG 1.171 endorses ANSI/IEEE Std. 1008–1987, ''IEEE Standard for Software Unit Testing'' with the exceptions stated in Section C, ''Staff Regulatory Position'' in the RG. ANSI/IEEE Std. 1008–1987, which was reaffirmed in 2002, describes a method acceptable to the NRC staff for complying with NRC regulations for promoting high functional reliability and design quality in the software used in safety systems. In particular, the method is consistent with the previously cited GDC in Appendix A to part 50 of Title 10, of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities'' and the criteria for quality assurance programs in Appendix B to 10 CFR part 50 as they apply to software unit testing. The criteria in Appendices A and B of 10 CFR part 50 apply to systems and related quality assurance processes, and the requirements extend to the software elements if those systems include software.

This RG is one of six RG revisions addressing computer software development and use in safety related systems of nuclear power plants. These RGs were developed by the Office of Nuclear Regulatory Research, Division of Engineering (RES/DE) with the assistance of multiple individuals in the Office of New Reactors, Division of Engineering (NRO/DE); Office Nuclear Reactor Regulation, Division of Engineering (NRR/DE); and the Office of Nuclear Security and Incident Response, Division of Security Policy (NSIR/DSP). The six interrelated guides are:

1. Revision 2 of RG 1.168, ''Verification, Validation, Reviews, and Audits for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG–1267. The package for Rev. 2 of RG 1.168 is in ADAMS at Accession No. ML12236A132.
2. Revision 1 of RG 1.169, ''Configuration Management Plans for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG–1206. The package for Rev. 1 of RG 1.169 is in ADAMS at Accession No. ML12354A524.
3. Revision 1 of RG 1.170, ''Test Documentation for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG1207. The package for Rev. 1 of RG 1.170 is in ADAMS at Accession No. ML12354A531.
4. Revision 1 of RG 1.171, ''Software Unit Testing for Digital Computer Software Used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG1208. The package for Rev. 1 of RG 1.171 is in ADAMS at Accession No. ML12354A534.
5. Revision 1 of RG 1.172, ''Software Requirements Specifications for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG–1209. The package for Rev. 1 of RG 1.172 is in ADAMS at Accession No. ML12354A538.
6. Revision 1 of RG 1.173, ''Developing Software Life Cycle Processes for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG–1210. The package for Rev. 1 of RG 1.173 is in ADAMS at Accession No. ML13008A338.

III. Backfitting and Issue Finality

Issuance of this final RG does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. As discussed in the ''Implementation'' section of this RG, the NRC has no current intention to impose this RG on holders of current operating licenses, early site permits or combined licenses, unless this final RG is part of the licensing basis for the facility. The NRC may apply this RG to applications for operating licenses, early site permits and combined licenses docketed by the NRC as of the date of issuance of the final RG, as well as to future applications for operating licenses, early site permits and combined licenses submitted after the issuance of the RG. Such action does not constitute backfitting as defined in 10 CFR 50.109(a)(1) and is not otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in part 52.

Congressional Review Act

This RG is a rule as designated in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget (OMB) has not found it to be a major rule as designated in the Congressional Review Act.

Dated at Rockville, Maryland, this 19th day of July, 2013.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2013–18682 Filed 8–1–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0195]

Developing Software Life Cycle Processes Used in Safety Systems of Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Revision to regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a revised regulatory guide (RG), revision 1 of RG 1.173, ''Developing Software Life Cycle Processes for Digital Computer Software used in Safety Systems of Nuclear Power Plants.'' This RG endorses the Institute of Electrical and Electronic Engineers (IEEE) Standard (Std.) 1074–2006, ''IEEE Standard for Developing a Software Project Life Cycle Process,'' issued 2006, with the clarifications and exceptions as stated in Section C, ''Staff Regulatory Position'' of the RG, as a method acceptable to the NRC staff for complying with NRC regulations to promote high functional reliability and design quality in software used in safety systems in nuclear power plants.

ADDRESSES: Please refer to Docket ID NRC–2012–0195 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0195. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 1 of RG 1.173, is available in ADAMS under Accession No. ML13009A190. The regulatory analysis may be found in ADAMS under Accession No. ML103120737.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

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FOR FURTHER INFORMATION CONTACT: Mark Orr, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–251–7495; email: *Mark.Orr@NRC.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing RG in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

II. Further Information

Revision 1 of RG 1.173 was issued with a temporary identification as Draft Regulatory Guide DG–1210 on August 22, 2012 (77 FR 50724) for a 60-day public comment period. The public comment period closed on November 22, 2012. Multiple public comments were received and addressed by the NRC staff. These comments and the NRC staff responses are available in ADAMS under Accession number ML13009A055.

Revision 1 of RG 1.173 endorses the guidance in IEEE Std. 1074–2006, ''IEEE Standard for Developing a Software Project Life Cycle Process,'' issued 2006, with the clarification and exceptions stated in Section C, Staff Regulatory Position'' of the RG. The NRC staff has determined that IEEE Std. 1074–2006 provides an acceptable method for complying with NRC regulations to promote high functional reliability and design quality in software used in safety systems. In particular, the method is consistent with the previously cited GDC in Appendix A to Title 10, of the *Code of Federal Regulations,* Part 50, ''Domestic Licensing of Production and Utilization Facilities'' (10 CFR Part 50) and the criteria for quality assurance programs in Appendix B to 10 CFR Part 50 as they apply to software development processes. The criteria of Appendices A and B apply to systems and related quality assurance processes, and the requirements also extend to the software elements if those systems include software.

Revision 1 of RG 1.173 supersedes Revision 0 of RG 1.173 and represents NRC staff guidance for future users and guidance. Earlier versions of this RG, however, continue to be acceptable for those licensees whose licensing basis includes earlier versions of this RG, absent a licensee-initiated change to tits licensing basis. Additional information on the staff's use of this revised RG with respect to both current and future users and applications is set forth in the ''Implementation'' section of the revised RG.

This RG is one of six RG revisions addressing computer software development and use in safety related systems of nuclear power plants. These RGs were developed by the Office of Nuclear Regulatory Research, Division of Engineering (RES/DE) with the assistance of multiple individuals in the Office of New Reactors, Division of Engineering (NRO/DE); Office Nuclear Reactor Regulation, Division of Engineering (NRR/DE); and the Office of Nuclear Security and Incident Response, Division of Security Policy (NSIR/DSP). The six interrelated RGs are:

1. Revision 2 of RG 1.168, ''Verification, Validation, Reviews, and Audits for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG–1267. The package for Rev. 2 of RG 1.168 is in ADAMS at Accession No. ML12236A132.
2. Revision 1 of RG 1.169, ''Configuration Management Plans for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG–1206. The package for Rev. 1 of RG 1.169 is in ADAMS at Accession No. ML12354A524.
3. Revision 1 of RG 1.170, ''Test Documentation for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG1207. The package for Rev. 1 of RG 1.170 is in ADAMS at Accession No. ML12354A531.
4. Revision 1 of RG 1.171, ''Software Unit Testing for Digital Computer Software Used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG1208. The package for Rev. 1 of RG 1.171 is in ADAMS at Accession No. ML12354A534.
5. Revision 1 of RG 1.172, ''Software Requirements Specifications for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG–1209. The package for Rev. 1 of RG 1.172 is in ADAMS at Accession No. ML12354A538. and
6. Revision 1 of RG 1.173, ''Developing Software Life Cycle Processes for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG–1210. The package for

Rev. 1 of RG 1.173 is in ADAMS at Accession No. ML13008A338.

III. Backfitting and Issue Finality

Issuance of this final RG does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR Part 52. As discussed in the ''Implementation'' section of this RG, the NRC has no current intention to impose this RG on holders of current operating licenses, early site permits or combined licenses, unless this final RG is part of the licensing basis for the facility.

The NRC may apply this RG to applications for operating licenses, early site permits and combined licenses docketed by the NRC as of the date of issuance of the final RG, as well as to future applications for operating licenses, early site permits and combined licenses submitted after the issuance of the RG. Such action does not constitute backfitting as defined in 10 CRF 50.109(a)(1) and is not otherwise inconsistent with the applicable issue finality provision in 10 CFR Part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in Part 52.

Congressional Review Act

This RG is a rule as designated in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget (OMB) has not found it to be a major rule as designated in the Congressional Review Act.

Dated at Rockville, Maryland, this 19th day of July, 2013.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2013–18681 Filed 8–1–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0195]

Configuration Management Plans for Digital Computer Software Used in Safety Systems of Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Revision to Regulatory Guide; Issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a revised regulatory guide (RG), revision 1 of RG 1.169, ''Configuration Management Plans for Digital Computer Software Used in Safety Systems of Nuclear Power Plants.'' This RG endorses, with clarifications and exceptions as stated in Section C, ''Staff Regulatory Guidance'' of the RG, the Institute of Electrical and Electronic Engineers (IEEE) Standard 828–2005, ''IEEE Standard for Software Configuration Management Plans,'' issued in 2005. This IEEE standard describes methods acceptable to the NRC staff for demonstrating compliance with NRC regulations for configuration management and control of software used in the safety systems of a nuclear power plant.

ADDRESSES: Please refer to Docket ID NRC–2012–0195 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0195. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 1 of RG 1.169 is available in ADAMS under Accession No. ML12355A642. The regulatory analysis may be found in ADAMS under Accession No. ML103200047.
- *NRC's PDR:* You may examine for free or purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

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FOR FURTHER INFORMATION CONTACT: Mark Orr, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–251–7495; email: *Mark.Orr@NRC.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing RG in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of NRC regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

II. Further Information

Revision 1 of RG 1.169 was issued with a temporary identification as Draft Regulatory Guide, DG–1206 on August 22, 2012 (77 FR 50727) for a 60-day public comment period. The public comment period closed on November 22, 2012. Multiple public comments were received and addressed by the NRC staff. These comments and the NRC staff responses are available in ADAMS under Accession number ML12355A529.

Revision 1 of RG 1.169 endorses IEEE Std. 828–2005, ''IEEE Standard for Software Configuration Management Plans,'' issued in 2005 with the exceptions and clarifications stated in Section C, ''Staff Regulatory Guidance of the RG.'' IEEE Std. 828–2005 describes methods acceptable to the NRC staff for use in complying with NRC regulations for quality standards that promote high functional reliability and design quality in software used in safety systems. In particular, the methods are consistent with GDC 1 in Appendix A to part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR) and the criteria for quality assurance programs in Appendix B to 10 CFR part 50 as they apply to the maintenance and control of appropriate records of software development activities. The criteria of Appendices A and B of 10 CFR part 50 apply to systems and related quality assurance processes, and the requirements also extend to software elements if those systems include software.

This RG is one of six RG revisions addressing computer software development and use in safety related systems of nuclear power plants. These RGs were developed by the Office of Nuclear Regulatory Research, Division of Engineering (RES/DE) with the assistance of multiple individuals in the Office of New Reactors, Division of Engineering (NRO/DE); Office Nuclear

Reactor Regulation, Division of Engineering (NRR/DE); and the Office of Nuclear Security and Incident Response, Division of Security Policy (NSIR/DSP). The six interrelated RGs are:

1. Revision 2 of RG 1.168, ''Verification, Validation, Reviews, and Audits for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG–1267. The package for Rev. 2 of RG 1.168 is in ADAMS at Accession No. ML12236A132.

2. Revision 1 of RG 1.169, ''Configuration Management Plans for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG–1206. The package for Rev. 1 of RG 1.169 is in ADAMS at Accession No. ML12354A524.

3. Revision 1 of RG 1.170, ''Test Documentation for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG1207. The package for Rev. 1 of RG 1.170 is in ADAMS at Accession No. ML12354A531.

4. Revision 1 of RG 1.171, ''Software Unit Testing for Digital Computer Software Used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG1208. The package for Rev. 1 of RG 1.171 is in ADAMS at Accession No. ML12354A534.

5. Revision 1 of RG 1.172, ''Software Requirements Specifications for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG–1209. The package for Rev. 1 of RG 1.172 is in ADAMS at Accession No. ML12354A538.

6. Revision 1 of RG 1.173, ''Developing Software Life Cycle Processes for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG–1210. The package for Rev. 1 of RG 1.173 is in ADAMS at Accession No. ML13008A338.

III. Backfitting and Issue Finality

Issuance of this revised RG does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. As discussed in the ''Implementation'' section of this RG, the NRC has no current intention to impose this RG on holders of current operating licenses, early site permits or combined licenses, unless this final regulatory guide is part of the licensing basis for the facility.

The NRC may apply this revised RG to applications for operating licenses, early site permits and combined licenses docketed by the NRC as of the date of issuance of the final RG, as well as to future applications for operating licenses, early site permits and combined licenses submitted after the issuance of the RG. Such action does not constitute backfitting as defined in 10 CFR 50.109(a)(1) and is not otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in part 52.

IV. Congressional Review Act

This RG is a rule as designated in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget (OMB) has not found it to be a major rule as designated in the Congressional Review Act.

Dated at Rockville, Maryland, this 19th day of July, 2013.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2013–18684 Filed 8–1–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0195]

Software Requirement Specifications for Digital Computer Software Used in Safety Systems of Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Revision to regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a revised regulatory guide (RG), revision 1 of RG 1.172, ''Software Requirement Specifications for Digital Computer Software used in Safety Systems of Nuclear Power Plants.'' This RG endorses the Institute of Electrical and Electronic Engineers (IEEE) Standard (Std.) 830–1998, ''IEEE Recommended Practice for Software Requirements Specifications,'' issued in 1998 and reaffirmed in 2009 with the exceptions and clarifications stated in Section C, ''Staff Regulatory Guidance'' of RG 1.172. IEEE Std. 830–1998 describes methods that the NRC staff considers acceptable to demonstrate compliance with NRC regulations for achieving high functional reliability and design quality in software used in safety systems in nuclear power plants.

ADDRESSES: Please refer to Docket ID NRC–2012–0195 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0195. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 1 of RG 1.172 is available in ADAMS under Accession No. ML13007A173. The regulatory analysis may be found in ADAMS under Accession No. ML13075A007.
- *NRC's PDR:* You may examine for free or purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

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FOR FURTHER INFORMATION CONTACT: Mark Orr, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–251–74955; email: *Mark.Orr@NRC.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing RG in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations,

techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

II. Further Information

Revision 1 of RG 1.172 was issued with a temporary identification as Draft Regulatory Guide, DG–1209 on August 22, 2012 (77 FR 50726) for a 60-day public comment period. The public comment period closed on November 22, 2012. Multiple public comments were received and addressed by the NRC staff. These comments and the NRC staff responses are available in ADAMS under Accession number ML13007A160.

Revision 1 of RG 1.172 endorses IEEE Std. 830–1998, ''IEEE Recommended Practice for Software Requirements Specifications,'' issued in 1998 and reaffirmed in 2009 with the clarifications and exceptions as stated in Section C, ''Staff Regulatory Position'' of the RG. IEEE Std. 830–1998 describes methods that the NRC staff considers acceptable for use in complying with the NRC regulations for achieving high functional reliability and design quality in software used in safety systems. In particular, the methods are consistent with the previously cited GDC and the criteria for quality assurance programs in Appendix B to Title 10, of the *Code of Federal Regulations,* Part 50, ''Domestic Licensing of Production and Utilization Facilities'' (10 CFR Part 50) as they apply to the development of software requirement specifications. The criteria of Appendix A and Appendix B to 10 CFR part 50 applies to systems and related quality standards and quality assurance processes as well as the software elements of those systems.

This RG is one of six RG revisions addressing computer software development and use in safety related systems of nuclear power plants. These RGs were developed by the Office of Nuclear Regulatory Research, Division of Engineering (RES/DE) with the assistance of multiple individuals in the Office of New Reactors, Division of Engineering (NRO/DE); Office Nuclear Reactor Regulation, Division of Engineering (NRR/DE); and the Office of Nuclear Security and Incident Response, Division of Security Policy (NSIR/DSP). The six interrelated RGs are:

1. Revision 2 of RG 1.168, ''Verification, Validation, Reviews, and Audits for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG–1267. The package for Rev. 2 of RG 1.168 is in ADAMS at Accession No. ML12236A132.

2. Revision 1 of RG 1.169, ''Configuration Management Plans for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG–1206. The package for Rev. 1 of RG 1.169 is in ADAMS at Accession No. ML12354A524.

3. Revision 1 of RG 1.170, ''Test Documentation for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG1207. The package for Rev. 1 of RG 1.170 is in ADAMS at Accession No. ML12354A531.

4. Revision 1 of RG 1.171, ''Software Unit Testing for Digital Computer Software Used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG1208. The package for Rev. 1 of RG 1.171 is in ADAMS at Accession No. ML12354A534.

5. Revision 1 of RG 1.172, ''Software Requirements Specifications for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG–1209. The package for Rev. 1 of RG 1.172 is in ADAMS at Accession No. ML12354A538.

6. Revision 1 of RG 1.173, ''Developing Software Life Cycle Processes for Digital Computer Software used in Safety Systems of Nuclear Power Plants,'' issued for public comment as DG–1210. The package for Rev. 1 of RG 1.173 is in ADAMS at Accession No. ML13008A338.

III. Backfitting and Issue Finality

Issuance of this final RG does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR Part 52. As discussed in the ''Implementation'' section of this RG, the NRC has no current intention to impose this RG on holders of current operating licenses, early site permits or combined licenses, unless this final RG is part of the licensing basis for the facility. The NRC may apply this RG to applications for operating licenses, early site permits and combined licenses docketed by the NRC as of the date of issuance of the final RG, as well as to future applications for operating licenses, early site permits and combined licenses submitted after the issuance of the RG. Such action does not constitute backfitting as defined in 10 CRF 50.109(a)(1) and is not otherwise inconsistent with the applicable issue finality provision in 10 CFR Part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in Part 52.

Congressional Review Act

This RG is a rule as designated in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget (OMB) has not found it to be a major rule as designated in the Congressional Review Act.

Dated at Rockville, Maryland, this 19th day of July, 2013.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2013–18678 Filed 8–1–13; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Request for External Review

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: National Healthcare Operations, Office of Personnel Management (OPM), offers the general public and other Federal agencies the opportunity to comment on a new information collection request (ICR) 3206–NEW, Request for External Review. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until October 1, 2013. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to National Healthcare Operations, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Ed DeHarde, or sent via electronic mail to *mspp@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting National Healthcare Operations, Office of Personnel Management, 1900 E Street NW., Washington, DC 20503, Attention: Ed DeHarde, or sent via electronic mail to *mspp@opm.gov.*

SUPPLEMENTARY INFORMATION: Section 1334 of the Patient Protection and Affordable Care Act, Public Law 111–148, as amended by the Health Care Education Reconciliation Act, Public Law 111–152 (together, ''Affordable Care Act''), directed the Office of Personnel Management (OPM) to enter into contracts with health insurance issuers to offer coverage on Exchanges (also called ''Marketplaces'') throughout the 50 States and the District of Columbia. OPM issued final regulations for the establishment of the Multi-State Plan Program (MSPP) on March 11, 2013, 78 FR 15560, which outlined an external review process that would be available to enrollees in Multi-State Plans (MSPs).

The regulations state that ''OPM will conduct external review of adverse benefit determinations using a process similar to OPM review of disputed claims under [the Federal Employees Health Benefits Program] . . . .'' A necessary part of conducting external review of adverse benefit determinations is accepting requests for external review from MSP enrollees who seek external review.

In general, after an issuer denies a claim, the enrollee whose claim is denied may ask the issuer to reconsider through a process called an internal appeal. If an issuer upholds a denial on internal appeal, the enrollee may seek external review of the denial. External review is a process that affords an enrollee in an MSP the right to have a denial of a claim appealed to an entity other than his or her health insurance issuer. The attached Model Notice of Final Internal Adverse Benefit Determination illustrates the content of the notice that an MSP issuer must provide to an MSP enrollee after denying a claim and upholding such denial upon internal appeal.

Analysis

Agency: National Healthcare Operations, Office of Personnel Management.

Title: Request for External Review.

OMB Number: 3206–NEW.

Frequency: Occasionally.

Affected Public: Multi-State Plan enrollees.

Estimated Number of Respondents: 2,933,333.

Estimated Time per Respondent: 30 minutes.

Estimated Total Burden Hours: 1,466,666.5.

U.S. Office of Personnel Management.

Elaine Kaplan,

Acting Director.

[FR Doc. 2013–18602 Filed 8–1–13; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Designation of Beneficiary: Federal Employees' Group Life Insurance, SF 2823

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0136, Designation of Beneficiary: Federal Employees' Group Life Insurance, SF 2823. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until October 1, 2013. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management, Healthcare and Insurance, 1900 E Street NW., Room 4332, Washington, DC 20415, Attention: Christopher Meuchner or sent by email to *Christopher.Meuchner@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the U.S. Office of Personnel Management, Retirement Services Publications Team, 1900 E Street NW., Room 4445, Washington, DC 20415, Attention: Cyrus S. Benson, or sent by email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: Standard Form 2823 is used by any Federal employee or retiree covered by the Federal Employees' Group Life Insurance (FEGLI) Program, or an assignee who owns an insured's coverage, to instruct the Office of Federal Employees' Group Life Insurance how to distribute the proceeds of the FEGLI coverage when the statutory order of precedence does not meet his or her needs. OPM is revising the form to clarify its policy regarding the filing of court orders used for the payment of FEGLI benefits. In addition, OPM is making some minor textual changes to explain how and to whom proceeds can be designated, and emphasizing that the insured individual keep the designation updated as needs change.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Designation of Beneficiary: Federal Employees' Group Life Insurance.

OMB Number: 3206–0136.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 48,000.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 12,000.

U.S. Office of Personnel Management.

Elaine Kaplan,

Acting Director.

[FR Doc. 2013–18604 Filed 8–1–13; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Civil Service Retirement System and Federal Employees' Retirement System; Opportunity for Annuitants to Elect Survivor Annuity Benefits for Same-Sex Spouses

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of a 2-year opportunity for annuitants who are in legal same-sex marriages to elect survivor annuities for their spouses under the Civil Service Retirement System (CSRS) and Federal Employees' Retirement System (FERS).

DATES: All retirees who are in legal same-sex marriages have through June 26, 2015, to inform OPM that they have legal same-sex marriages that now qualify for recognition and to elect survivor annuities for their spouses based on their recognized marital status.

FOR FURTHER INFORMATION CONTACT: Information by Phone: Call the Retirement Information Office toll-free at 1–888–767–6738. If you use TTY equipment, call 1–855–887–4957. Be sure to have your claim number (CSA number) on hand when you call a specialist. Information by Email: *retire@opm.gov*.

Information or Elections by Mail: U.S. Office of Personnel Management, Retirement Operations Center, PO Box 45, Boyers, PA, 16017–0045. Please include your full name and your claim number (CSA number) in your correspondence.

SUPPLEMENTARY INFORMATION: Section 3 of the Defense of Marriage Act (DOMA) provided that, when used in a Federal law, the term ''marriage'' would mean only a legal union between one man and one woman as husband and wife, and that the term ''spouse'' referred only to a person of the opposite sex who is a husband or a wife. Because of DOMA, the Federal Government has been prohibited from recognizing the legal marriages of same-sex couples for purposes of retirement benefit programs.

On June 26, 2013, in *United States* v. *Windsor,* 570 U.S. __ (2013), the Supreme Court of the United States (Supreme Court) ruled that Section 3 of DOMA is unconstitutional. As a result of this decision, the U.S. Office of Personnel Management (OPM) is now able to extend benefits to Federal employees and annuitants who are legally married to spouses of the same sex, regardless of the employees' or annuitants' states of residency. Consistent with OPM's long-standing policy of recognizing the legal foreign marriages of opposite-sex couples for purposes of the retirement benefit programs that OPM administers, OPM will also recognize legal same-sex marriages granted in countries that authorize such marriages, regardless of the employees' or annuitants' states of residency, for purposes of these programs.

As OPM stated in its June 28, 2013 Memorandum for Heads of Executive Departments and Agencies, all retirees who are in legal same-sex marriages will have 2 years from the June 26, 2013 date of the Supreme Court's decision (i.e, through June 26, 2015) to inform OPM that they have legal marriages that now qualify for recognition and to elect reductions in their CSRS or FERS retirement annuities to provide survivor annuity benefits for their spouses, based on their recognized marital status. An annuitant should be aware that electing a survivor annuity will require a reduction of his/her annuity to provide the survivor annuity, or an adjustment of the amount of reduction currently being made to provide an insurable interest annuity to change the reduction amount to a survivor annuity reduction. Before an election is made, we recommend that the annuitants carefully consider what effect the reduction or change in reduction will have on the amount of their net annuities.

Annuitants should consider their language carefully before sending OPM written requests regarding survivor benefits for their spouses. An annuitant who contacts OPM and only request information about the effect a survivor election would have on the annuity will receive a statement describing the cost of the election and an election form that would need to be returned to OPM by June 26, 2015, to elect the survivor benefit. An annuitant who sends a signed statement or letter to OPM and indicates that he/she wants to elect a survivor benefit for a spouse will also receive a statement describing the cost of the election; he/she will not be able to change his/her mind about providing the survivor benefit. Unless otherwise specified, OPM will consider any requests for information about survivor benefits or any signed elections of survivor benefits as requests for information or elections of the maximum survivor benefit. More information about the election and the survivor reduction is provided at *http://www.opm.gov/retirement-services/my-annuity-and-benefits/life-events/#url=MarriageDivorce.*

A request for information about survivor annuity benefits or signed, written elections of survivor benefits should be accompanied with a copy of the marriage certificate proving the same-sex marriage. Please be advised that an election of a survivor annuity is irrevocable. An annuitant will not be able to change an election later. We strongly urge annuitants to carefully consider elections before submitting them to OPM.

U.S. Office of Personnel Management.

Elaine Kaplan,

Acting Director.

[FR Doc. 2013–18665 Filed 8–1–13; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from June 1, 2013, to June 30, 2013.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No Schedule A authorities to report during June 2013.

Schedule B

No Schedule B authorities to report during June 2013.

Schedule C

The following Schedule C appointing authorities were approved during June 2013.

Agency name	Organization name	Position title	Authorization No.	Effective date
Commission on Civil Rights	Commissioners	Special Assistant	CC130002	6/3/2013
Department of the Air Force	Office of the Assistant Secretary, Installations, Environment, and Logistics.	Special Assistant	DF130020	6/6/2013
Department of Agriculture	Office of the Under Secretary for Rural Development.	National Coordinator, Local and Regional Food Systems.	DA130073	6/3/2013
	Farm Service Agency	State Executive Director (2)	DA130074	6/13/2013
			DA130098	6/25/2013
	Natural Resources Conservation Service.	Special Assistant	DA130093	6/13/2013
	Office of the Assistant Secretary for Congressional Relations.	Staff Assistant (Legislative Analyst).	DA130095	6/13/2013
	Office of the Assistant Secretary for Administration.	Senior Advisor	DA130104	6/28/2013
	Office of the Under Secretary for Natural Resources and Environment.	Senior Advisor	DA130108	6/28/2013
	Rural Business Service	Chief of Staff	DA130111	6/28/2013
Department of Commerce	Deputy Assistant Secretary for Domestic Operations.	Special Assistant	DC130061	6/14/2013
	Assistant Secretary for Market Access and Compliance.	Special Advisor	DC130057	6/7/2013
Department of Defense	Washington Headquarters Services.	Defense Fellow	DD130080	6/13/2013
	Office of the Assistant Secretary of Defense (Public Affairs).	Speechwriter	DD130081	6/21/2013
Department of Education	Office of Vocational and Adult Education.	Deputy Assistant Secretary for Community Colleges.	DB130048	6/6/2013
	Office for Civil Rights	Senior Counsel	DB130034	6/28/2013
	Office of the Under Secretary	Confidential Assistant	DB130052	6/24/2013
		Deputy Under Secretary	DB130047	6/28/2013
Department of Energy	Assistant Secretary for Energy Efficiency and Renewable Energy.	Special Assistant for Clean Energy Manufacturing and Commercialization.	DE130039	6/18/2013
		Director of Legislative Affairs	DE130053	6/18/2013
		Senior Advisor	DE130070	6/25/2013
	Associate Administrator for External Affairs.	Congressional Affairs Specialist	DE130062	6/18/2013
		Deputy Director of Congressional Affairs.	DE130063	6/28/2013
	Assistant Secretary for Congressional and Intergovernmental Affairs.	Deputy Assistant Secretary for Energy Policy.	DE130066	6/19/2013
	Office of the Secretary	Special Assistant	DE130067	6/28/2013
	Office of Management	Deputy Director, Office of Scheduling and Advance.	DE130071	6/28/2013
	Office of Public Affairs	Managing Editor	DE130073	6/28/2013
Environmental Protection Agency	Office of the Administrator	White House Liaison	EP130029	6/14/2013
	Office of the Associate Administrator for External Affairs and Environmental Education.	Director for Internal Communications.	EP130030	6/19/2013
Farm Credit Administration	Office of Congressional and Public Affairs.	Associate Director of Congressional Affairs.	FL130003	6/11/2013
General Services Administration	Office of Communications and Marketing.	Deputy Associate Administrator for Media Affairs.	GS130007	6/10/2013
		Press Secretary	GS130008	6/10/2013
	Office of the Administrator	Senior Advisor	GS130012	6/17/2013
		White House Liaison	GS130011	6/10/2013
	Public Buildings Service	Special Assistant	GS130013	6/17/2013
Department of Health and Human Services.	Office of Intergovernmental and External Affairs.	Special Assistant	DH130069	6/3/2013
		Director of Provider Outreach	DH130089	6/17/2013
	Office of the Secretary	White House Liaison for Political Personnel, Boards and Commissions.	DH130091	6/13/2013
Department of Homeland Security	Office of the Chief of Staff	Special Assistant (2)	DM130115	6/3/2013
			DM130137	6/25/2013

Agency name	Organization name	Position title	Authorization No.	Effective date
Department of Housing and Urban Development.	Office of the General Counsel	Senior Counsel	DU130027	6/27/2013
	Office of Public Affairs	Senior Speechwriter	DU130028	6/27/2013
Department of the Interior	Assistant Secretary—Indian Affairs	Senior Advisor- Indian Affairs	DI130024	6/4/2013
	Secretary's Immediate Office	Special Assistant (2)	DI130035	6/7/2013
			DI130037	6/11/2013
		Director of Scheduling and Advance.	DI130042	6/26/2013
	Assistant Secretary—Water and Science.	Counselor	DI130036	6/7/2013
	Assistant Secretary—Fish and Wildlife/Parks.	Senior Advisor for Fish and Wildlife/Parks.	DI130041	6/26/2013
Department of Justice	Office of Public Affairs	Deputy Speechwriter	DJ130058	6/4/2013
	Antitrust Division	Senior Counsel	DJ130066	6/13/2013
	Office of the Attorney General	Director of Advance	DJ130069	6/21/2013
Department of Labor	Office of the Solicitor	Special Counsel	DL130036	6/14/2013
	Veterans Employment and Training Service.	Chief of Staff	DL130035	6/21/2013
Office of Management and Budget	Office of the Director	Special Assistant	BO130022	6/24/2013
Office of National Drug Control Policy.	Office of Legislative Affairs	Associate Director (Legislative Affairs).	QQ130003	6/19/2013
Office of the United States Trade Representative.	Office of the Ambassador	Confidential Assistant	TN130003	6/3/2013
		Deputy Chief of Staff	TN130004	6/18/2013
Small Business Administration	Office of Congressional and Legislative Affairs.	Special Advisor	SB130015	6/26/2013
Department of State	Bureau of Public Affairs	Deputy Spokesperson	DS130089	6/13/2013
	Bureau of Legislative Affairs	Legislative Management Officer	DS130091	6/14/2013
	Foreign Policy Planning Staff	Speechwriter (3)	DS130094	6/28/2013
			DS130095	6/28/2013
			DS130096	6/28/2013
Department of Transportation	Administrator	Director of Communications	DT130025	6/25/2013
	Office of Congressional Affairs	Director of Congressional Affairs	DT130027	6/25/2013
Department of the Treasury	Assistant Secretary (Tax Policy)	Senior Advisor	DY130061	6/17/2013
	Assistant Secretary (Public Affairs)	Media Affairs Specialist	DY130062	6/25/2013

The following Schedule C appointing authorities were revoked during June 2013.

Agency name	Organization name	Position title	Authorization No.	Vacate date
Commission on Civil Rights	Commissioners	Special Assistant to the Chairman	CC110008	6/10/2013
Department of Agriculture	Natural Resources Conservation Service.	Assistant Chief	DA120007	6/1/2013
	Office of the Assistant Secretary for Administration.	Chief of Staff	DA110063	6/1/2013
	Office of Communications	Deputy Director, Operations	DA110016	6/1/2013
	Office of the Under Secretary for Food, Nutrition and Consumer Services.	Senior Advisor	DA130063	6/1/2013
	Office of the Under Secretary for Natural Resources and Environment.	Special Assistant	DA090139	6/1/2013
Department of Commerce	Office of the White House Liaison	Special Advisor	DC130025	6/1/2013
Department of Education	Office of Innovation and Improvement.	Confidential Assistant	DB120102	6/1/2013
	Office of Planning, Evaluation and Policy Development.	Special Assistant	DB120006	6/7/2013
		Confidential Assistant	DB110110	6/11/2013
	Office of the General Counsel	Deputy General Counsel for Accountability.	DB100055	6/14/2013
	Office of the Deputy Secretary	Confidential Assistant	DB130015	6/15/2013
Department of Energy	Office of Science	Special Assistant	DE110106	6/1/2013
Department of Homeland Security	Office of the Under Secretary for Science and Technology.	Special Assistant to the Under Secretary for Science and Technology.	DM120027	6/1/2013
	Office of the Chief of Staff	Special Assistant to the Deputy Chief of Staff.	DM120126	6/15/2013

Agency name	Organization name	Position title	Authorization No.	Vacate date
Department of Housing and Urban Development.	Office of Public Affairs	Chief External Affairs Officer/General Deputy Assistant Secretary for Public Affairs.	DU120048	6/1/2013
	Office of Strategic Planning and Management.	Deputy Director	DU100061	6/1/2013
	Office of the Secretary	Special Assistant	DU120037	6/21/2013
Department of Justice	Civil Division	Counsel and Chief of Staff	DJ120073	6/1/2013
	Criminal Division	Counsel to the Assistant Attorney General.	DJ100175	6/1/2013
	Office of the Attorney General	White House Liaison	DJ120008	6/1/2013
	Office on Violence Against Women.	Deputy Director for Policy Development.	DJ100086	6/14/2013
	Civil Rights Division	Senior Counsel	DJ110102	6/15/2013
	Office of Justice Programs	Chief of Staff	DJ100118	6/21/2013
Department of Labor	Office of Disability Employment Policy.	Advisor	DL110020	6/1/2013
	Occupational Safety and Health Administration.	Chief of Staff	DL090117	6/1/2013
	Office of the Secretary	Special Assistant	DL100057	6/1/2013
	Bureau of International Labor Affairs.	Special Assistant	DL100008	6/1/2013
Department of the Interior	Secretary's Immediate Office	Special Assistant	DI090141	6/2/2013
	Assistant Secretary—Policy, Management and Budget.	Special Assistant to the Assistant Secretary—Policy, Management and Budget.	DI120050	6/28/2013
Farm Credit Administration	Office of Congressional and Public Affairs.	Associate Director of Congressional Affairs.	FL090003	6/1/2013
General Services Administration	Office of Congressional and Intergovernmental Affairs.	Deputy Associate Administrator for Legislative Affairs.	GS110026	6/1/2013
	Office of the Administrator	Communications Director	GS120012	6/15/2013
		Press Secretary (2)	GS110029	6/15/2013
			GS120023	6/15/2013
Office of the Secretary of Defense	Office of the Assistant Secretary of Defense (Homeland Defense and America's Security Affairs).	Special Assistant to the Deputy Assistant Secretary of Defense (Western Hemisphere Affairs).	DD090245	6/1/2013

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Elaine Kaplan,

Acting Director.

[FR Doc. 2013–18605 Filed 8–1–13; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from May 1, 2013, to May 31, 2013.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR*. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No Schedule A authorities to report during May 2013.

Schedule B

No Schedule B authorities to report during May 2013.

Schedule C

The following Schedule C appointing authorities were approved during May 2013.

Agency name	Organization name	Position title	Authorization No.	Effective date
Department of Agriculture	Office of the Under Secretary for Food, Nutrition and Consumer Services.	Senior Advisor	DA130063	5/3/2013
	Office of the Under Secretary for Rural Development.	State Executive Director, Montana	DA130064	5/3/2013
	Office of Communications	Director of Risk Management	DA130069	5/17/2013
	Farm Service Agency	State Executive Director, Colorado	DA130067	5/17/2013

Agency name	Organization name	Position title	Authorization No.	Effective date
		State Executive Director, Massachusetts.	DA130048	5/21/2013
	Office of the Assistant Secretary for Civil Rights.	Special Assistant	DA130054	5/30/2013
	Office of the Secretary	White House Liaison	DA130077	5/31/2013
	Farm Service Agency	State Executive Director, Texas	DA130068	5/31/2013
Department of Commerce	Office of Public Affairs	Press Assistant	DC130044	5/9/2013
	Office of the Under Secretary	Special Assistant	DC130047	5/29/2013
Department of Defense	Office of the Assistant Secretary of Defense (Public Affairs).	Speech Writer	DD130058	5/15/2013
		Research Assistant	DD130070	5/16/2013
	Office of the Secretary	Protocol Officer	DD130068	5/15/2013
	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD130075	5/22/2013
	Office of the Principal Deputy Under Secretary for Policy.	Special Assistant for Strategy, Plans and Forces.	DD130074	5/30/2013
	Office of the Assistant Secretary of Defense (Homeland Defense and America's Security Affairs).	Special Assistant (Western Hemisphere Affairs).	DD130076	5/30/2013
	Office of the Assistant Secretary of Defense (Reserve Affairs).	Deputy Assistant Secretary of Defense (Manpower and Personnel).	DD130072	5/31/2013
Department of the Air Force	Office of the Assistant Secretary for Financial Management and Comptroller.	Special Assistant, Financial Administration and Programs.	DF130017	5/15/2013
Department of Education	Office of Communications and Outreach.	Confidential Assistant	DB130028	5/6/2013
	Office of the Secretary	Special Assistant	DB130042	5/8/2013
	Office of the Under Secretary	Chief of Staff	DB130043	5/8/2013
		Confidential Assistant (2)	DB130039	5/22/2013
			DB130037	5/30/2013
	Office of the Deputy Secretary	Confidential Assistant	DB130044	5/15/2013
	Office of Planning, Evaluation and Policy Development.	Special Assistant (2)	DB130035	5/21/2013
			DB130030	5/17/2013
	Office for Civil Rights	Confidential Assistant	DB130033	5/17/2013
	Office of the General Counsel	Special Assistant	DB130038	5/30/2013
	Office of Elementary and Secondary Education.	Deputy Assistant Secretary for Policy and Strategic Initiatives.	DB130029	5/17/2013
	Office of Postsecondary Education	Confidential Assistant	DB130045	5/31/2013
	Office of Vocational and Adult Education.	Confidential Assistant	DB130036	5/17/2013
Department of Energy	Assistant Secretary for Energy Efficiency and Renewable Energy.	Chief of Staff	DE130037	5/15/2013
	Office of the Secretary	Special Assistant	DE130042	5/15/2013
	Office of the Deputy Secretary	Special Assistant	DE130038	5/17/2013
	Assistant Secretary for Congressional and Intergovernmental Affairs.	Senior Legislative Advisor	DE130033	5/21/2013
	Office of Science	Special Advisor	DE130041	5/21/2013
Environmental Protection Agency	Office of the Associate Administrator for Congressional and Intergovernmental Relations.	Senior Advisor	EP130019	5/1/2013
		Deputy Associate Administrator for Intergovernmental Relations.	EP130024	5/29/2013
Export-Import Bank	Office of the Chairman	Chief of Staff	EB130003	5/6/2013
Federal Communications Commission.	Office of the Chairwoman	Special Assistant	FC130004	5/22/2013
General Services Administration	Office of the Administrator	Deputy Chief of Staff	GS130005	5/1/2013
	Public Buildings Service	Chief of Staff	GS130010	5/16/2013
Department of Health and Human Services.	Office of the Secretary	Deputy Director for Scheduling and Advance.	DH130071	5/31/2013
	Office of Intergovernmental and External Affairs.	Director of Consumer Outreach	DH130066	5/17/2013
Department of Homeland Security	Office of the Under Secretary for National Protection and Programs Directorate.	Cyber Security Strategist	DM130098	5/3/2013
		Confidential Assistant	DM130107	5/16/2013
	Office of the Under Secretary for Science and Technology.	Special Assistant for Science and Technology.	DM130110	5/30/2013
Department of Housing and Urban Development.	Office of the Chief Human Capital Officer.	Director, Office of Executive Scheduling and Operations.	DU130014	5/16/2013
	Office of Housing	Policy Advisor	DU130013	5/17/2013

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Policy Development and Research.	Senior Advisor for Housing Finance.	DU130015	5/30/2013
	Office of the Secretary	Senior Advisor for Housing Finance.	DU130017	5/31/2013
Department of the Interior	Assistant Secretary for Policy, Management and Budget.	Special Assistant for Policy, Management and Budget.	DI130023	5/9/2013
	Office of Congressional and Legislative Affairs.	Senior Counsel	DI130031	5/22/2013
Department of Justice	Criminal Division	Senior Counsel	DJ130051	5/1/2013
	Office of the Attorney General	Special Assistant	DJ130054	5/16/2013
Department of Labor	Office of the Secretary	Special Assistant	DL130019	5/1/2013
		White House Liaison	DL130029	5/7/2013
	Office of the Solicitor	Senior Counselor	DL130015	5/17/2013
	Office of Disability Employment Policy.	Chief of Staff	DL130024	5/21/2013
	Occupational Safety and Health Administration.	Senior Policy Advisor	DL130030	5/21/2013
		Chief of Staff	DL130032	5/21/2013
National Endowment for the Arts	National Endowment for the Arts	Confidential Assistant	NA130001	5/31/2013
Office of Management and Budget	Office of the Director	Assistant	BO130016	5/9/2013
Small Business Administration	Office of Field Operations	Regional Administrator (Region VIII), Denver, Colorado.	SB130012	5/2/2013
		Regional Administrator (Region I), Boston, Massachusetts.	SB130013	5/17/2013
	Office of the Administrator	Special Assistant	SB130011	5/3/2013
	Office of Investment	Special Assistant for the Associate Administrator for Investment and Innovation.	SB130004	5/6/2013
Department of State	Office of the Secretary	Special Assistant	DS130052	5/2/2013
		Staff Assistant (3)	DS130062	5/2/2013
			DS130063	5/2/2013
			DS130066	5/7/2013
		Senior Advisor	DS130074	5/23/2013
	Foreign Policy Planning Staff	Chief Speechwriter	DS130064	5/2/2013
	Office of the Chief of Protocol	Assistant Chief of Protocol (Visits)	DS130065	5/9/2013
		Protocol Officer (Visits)	DS130073	5/21/2013
		Assistant Chief for Diplomatic Partnerships.	DS130046	5/9/2013
		Special Advisor	DS130043	5/9/2013
		Senior Protocol Officer	DS130070	5/17/2013
	Department of State	Senior Advisor	DS130075	5/30/2013
	Office of the Under Secretary for Management.	White House Liaison	DS130076	5/31/2013
Trade and Development Agency	Office of the Director	Public Affairs Specialist	TD130003	5/1/2013
Department of Transportation	Public Affairs	Deputy Director of Public Affairs	DT130017	5/7/2013
	Administrator	Director of Communications	DT130020	5/7/2013
	Assistant Secretary for Governmental Affairs.	Director of Governmental Affairs	DT130021	5/10/2013
Department of the Treasury	Secretary of the Treasury	Associate Director, Scheduling and Advance.	DY130041	5/24/2013
United States International Trade Commission.	Office of Commissioner Broadbent	Attorney-Advisor	TC130002	5/7/2013
Department of Veterans Affairs	Office of the Assistant Secretary for Congressional and Legislative Affairs.	Special Assistant	DV130030	5/14/2013

The following Schedule C appointing authorities were revoked during May 2013.

Agency name	Organization name	Position title	Authorization No.	Vacate date
Department of Agriculture	Office of the Secretary	Advisor to the Secretary for Special Projects.	DA110037	5/4/2013
	Office of the Under Secretary for Farm and Foreign Agricultural Service.	Chief of Staff	DA110040	5/4/2013

Agency name	Organization name	Position title	Authorization No.	Vacate date
	Office of the Under Secretary for Research, Education, and Economics.	Chief of Staff	DA120032	5/4/2013
Department of Commerce	Office of Public Affairs	Senior Advisor for Communications and Policy.	DC120073	5/3/2013
	Office of the Chief of Staff	Confidential Assistant to the Deputy Chiefs of Staff.	DC120022	5/4/2013
	Office of the Under Secretary	Senior Advisor	DC100102	5/10/2013
	Office of the General Counsel	Special Advisor to the General Counsel.	DC110105	5/24/2013
	Office of Policy and Strategic Planning.	Special Assistant	DC120148	5/25/2013
Department of Education	Office of the Under Secretary	Chief of Staff	DB090152	5/5/2013
	Office of the Deputy Secretary	Confidential Assistant (2)	DB110122	5/10/2013
			DB100097	5/18/2013
	Office of the Secretary	Executive Assistant	DB110057	5/18/2013
	Office of Planning, Evaluation, and Policy Development.	Special Assistant	DB120077	5/28/2013
Department of Health and Human Services.	Office of the Secretary	Deputy Director for Scheduling and Advance.	DH110140	5/8/2013
Department of Homeland Security	Office of the Chief of Staff	Special Assistant to the Deputy Chief of Staff.	DM110169	5/5/2013
	U.S. Citizenship and Immigration Services.	Counselor to the Director	DM100340	5/17/2013
	Office of the Under Secretary for National Protection and Programs Directorate.	Cybersecurity Strategist	DM120050	5/18/2013
Department of Housing and Urban Development.	Office of the Administration	Director, Office of Executive Scheduling and Operations.	DU100075	5/18/2013
	Office of the Chief Human Capital Officer.	Director of Scheduling	DU120013	5/18/2013
Department of Justice	Office of Public Affairs	Confidential Assistant	DJ120003	5/14/2013
	Office of the Attorney General	Special Assistant to the Attorney General.	DJ120079	5/24/2013
	National Security Division	Counsel	DJ120024	5/25/2013
Department of Labor	Office of the Solicitor	Special Assistant	DL100025	5/18/2013
Department of State	Bureau of Conflict and Stabilization Operations.	Director of Overseas Operations	DS120069	5/3/2013
	Office of the Global Women's Issues.	Staff Assistant	DS120117	5/9/2013
Department of Transportation	Public Affairs	Deputy Director of Public Affairs	DT120023	5/19/2013
Federal Communications Commission.	Office of Strategic Planning and Policy Analysis.	Advisor	FC120007	5/17/2013
National Endowment for the Arts	National Endowment for the Arts	Confidential Assistant to the Chief of Staff.	NA110002	5/5/2013
Office of Management and Budget	Office of the Director	Senior Advisor	BO120001	5/3/2013
Office of the Secretary of Defense	Office of the Secretary	Protocol Officer	DD100137	5/18/2013
	Office of the Assistant Secretary of Defense (International Security Affairs).	Special Assistant to the Deputy Assistant Secretary of Defense (Europe/NATO).	DD110001	5/24/2013
Small Business Administration	Office of Congressional and Legislative Affairs.	Deputy Assistant Administrator for Congressional and Legislative Affairs.	SB100003	5/4/2013

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Elaine Kaplan,

Acting Director.

[FR Doc. 2013–18606 Filed 8–1–13; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from April 1, 2013, to April 30, 2013.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Senior Executive Service and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each

month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

75. Woodrow Wilson International Center for Scholars (Sch. A, 213.3175)

(a) One Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, two Social Science Program Administrators, one Middle East Studies Program Administrator, one African Studies Program Administrator, one Global Sustainability and Resilience Program Administrator, one Canadian Studies Program Administrator; one China Studies Program Administrator, and one Science, Technology and Innovation Program Administrator.

Schedule B

10. Department of Justice (Sch. B, 213.3210)

(f) Bureau of Alcohol, Tobacco, and Firearms

(1) Criminal Investigator positions, grades GS–5 through GS–12 (or equivalent). Service under this authority may not exceed 3 years and 120 days.

Schedule C

The following Schedule C appointing authorities were approved during April 2013.

Agency name	Organization name	Position title	Authorization No.	Effective date
Department of Agriculture	Office of the Under Secretary for Rural Development.	Special Assistant	DA130031	4/4/2013
		State Executive Director, Colorado	DA130053	4/22/2013
	Office of the Assistant Secretary for Administration.	Senior Advisor	DA130039	4/4/2013
	Farm Service Agency	State Executive Director, Connecticut.	DA130049	4/15/2013
	Office of the Under Secretary for Farm and Foreign Agricultural Service.	State Executive Director, Minnesota.	DA130056	4/30/2013
Department of Commerce	Trade Promotion and the U.S. and Foreign Commercial Service.	Special Assistant	DC130041	4/30/2013
	Office of the Under Secretary	Director, Office of Legislative Affairs.	DC130042	4/30/2013
Department of Defense	Washington Headquarters Services	Defense Fellow	DD130057	4/5/2013
	Office of the Assistant Secretary of Defense (Homeland Defense and Americas' Security Affairs).	Special Assistant for Homeland Defense and Americas' Security Affairs.	DD130050	4/9/2013
	Office of the Under Secretary of Defense (Personnel and Readiness).	Director, Defense Suicide Prevention Office.	DD130046	4/22/2013
Department of Education	Office of the Under Secretary	Executive Director, White House Initiative on Educational Excellence for Hispanics.	DB130022	4/3/2013
	Office of Postsecondary Education	Deputy Assistant Secretary for International and Foreign Language Education.	DB130031	4/12/2013
	Office of Communications and Outreach.	Deputy Press Secretary for Strategic Communications.	DB130025	4/19/2013
	Office of Innovation and Improvement.	Confidential Assistant	DB130041	4/30/2013
Environmental Protection Agency	Office of the Administrator	Director of Scheduling and Advance.	EP130017	4/17/2013
	Office of the Associate Administrator for External Affairs and Environmental Education.	Deputy Press Secretary	EP130015	4/22/2013
Federal Trade Commission	Office of the Chairman	Confidential Assistant	FT130004	4/15/2013
General Services Administration	Office of the Administrator	Special Assistant	GS130004	4/23/2013
Department of Health and Human Services.	Office of the Deputy Secretary	Special Assistant	DH130053	4/4/2013
	Office of the Secretary	Special Assistant	DH130058	4/12/2013
		Director of Scheduling and Advance.	DH130059	4/12/2013
	Office of the Assistant Secretary for Public Affairs.	Director of Public Health Initiatives	DH130060	4/30/2013
Department of Homeland Security	Federal Emergency Management Agency.	Director of Individual and Community Preparedness.	DM130059	4/5/2013
	Office of the Assistant Secretary for Intergovernmental Affairs.	Intergovernmental Affairs Coordinator.	DM130061	4/5/2013
	Office of the Chief of Staff	Deputy Chief of Staff	DM130052	4/15/2013
Department of Housing and Urban Development.	Office of Public Affairs	Press Secretary	DU130008	4/2/2013
Department of the Interior	National Park Service	Assistant Coordinator for the Centennial.	DI130018	4/11/2013
		Advisor, National Park Service	DI130019	4/11/2013

Agency name	Organization name	Position title	Authorization No.	Effective date
	Secretary's Immediate Office	Press Assistant	DI130022	4/22/2013
Department of Justice	Office of the Deputy Attorney General.	Counsel	DJ130044	4/9/2013
	Tax Division	Confidential Assistant	DJ130046	4/9/2013
Department of Labor	Office of the Deputy Secretary	Policy Advisor	DL130018	4/4/2013
	Office of Congressional and Intergovernmental Affairs.	Regional Representative	DL130016	4/11/2013
	Office of the Assistant Secretary for Policy.	Senior Policy Advisor	DL130023	4/18/2013
Office of Personnel Management	Office of the General Counsel	Deputy General Counsel for Policy	PM130007	4/4/2013
Department of Transportation	Assistant Secretary for Budget and Programs.	Senior Advisor for Budget and Programs.	DT130014	4/11/2013
Department of the Treasury	Assistant Secretary (Public Affairs)	Spokesperson (2)	DY130032	4/23/2013
			DY130033	4/23/2013

The following Schedule C appointing authorities were revoked during April 2013.

Agency name	Organization name	Position title	Authorization No.	Vacate date
Department of Commerce	Office of the Chief of Staff	Executive Assistant to the Secretary.	DC120005	4/6/2013
		Deputy Director of Scheduling	DC100111	4/22/2013
	National Oceanic and Atmospheric Administration.	Deputy Director, Office of Legislative Affairs.	DC110104	4/22/2013
	Office of the Assistant Secretary for Legislative and Intergovernmental Affairs.	Associate Director of Legislative Affairs.	DC110037	4/26/2013
Department of Defense	Office of the Secretary	Confidential Assistant	DD110125	4/12/2013
Department of Education	Office of the Secretary	Special Assistant	DB110101	4/6/2013
	Office of Innovation and Improvement.	Special Assistant	DB120048	4/20/2013
Department of Energy	Assistant Secretary for Energy Efficiency and Renewable Energy.	Director of Legislative Affairs	DE120145	4/12/2013
	Office of Public Affairs	Senior Digital Communications Strategist.	DE120059	4/25/2013
Environmental Protection Agency	Office of the Administrator	Director of Scheduling and Advance.	EP110042	4/5/2013
Department of Homeland Security	Federal Emergency Management Agency.	Director of Intergovernmental Affairs.	DM100175	4/6/2013
	Office of the Chief of Staff	Special Assistant	DM120158	4/6/2013
	Office of the Assistant Secretary for Public Affairs.	Director of Communications and Advisor to the Secretary.	DM120156	4/20/2013
Department of Housing and Urban Development.	Office of Public Affairs	Assistant Press Secretary	DU120014	4/12/2013
Department of the Interior	Assistant Secretary for Policy, Management and Budget.	Special Assistant to the Assistant Secretary for Policy, Management and Budget.	DI100048	4/8/2013
	Secretary's Immediate Office	Press Assistant	DI130014	4/15/2013
Department of Justice	Antitrust Division	Confidential Assistant	DJ090178	4/19/2013
Department of Labor	Office of Public Affairs	Special Assistant	DL110047	4/6/2013
	Office of the Secretary	Deputy Director of Scheduling and Advance.	DL130013	4/12/2013
		Special Assistant	DL090048	4/19/2013
Department of State	Bureau of International Narcotics and Law Enforcement Affairs.	Special Assistant	DS110059	4/6/2013

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Elaine Kaplan,

Acting Director.

[FR Doc. 2013–18607 Filed 8–1–13; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–30631]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

July 26, 2013.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of July 2013. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 20, 2013, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

For Further Information Contact: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Exemptive Applications Office, 100 F Street NE., Washington, DC 20549–8010.

JHW Pan Asia Strategies TE Fund, LLC [File No. 811–22381]

JHW Pan Asia Strategies Fund, LLC [File No. 811–22382]

JHW Pan Asia Strategies Master Fund, LLC [File No. 811–22383]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

Filing Dates: The applications were filed on June 19, 2012, and amended on June 25, 2013.

Applicants' Address: 75 Rockefeller Plaza, 14th Floor, New York, NY 10019.

CAMCO Investors Trust [File No. 811–21966]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 27, 2013, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $3,780 incurred in connection with the liquidation were paid by Cornerstone Asset Management Inc., applicant's investment adviser.

Filing Date: The application was filed on July 9, 2013.

Applicant's Address: 116 S. Stewart St., Winchester, VA 22601.

Dreman Contrarian Funds [File No. 811–22118]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to Valued Advisers Trust and, on February 28, 2013, made a final distribution to its shareholders based on net asset value. Expenses of $68,138 incurred in connection with the reorganization were paid by Dreman Value Management, LLC, applicant's investment adviser.

Filing Date: The application was filed on June 13, 2013.

Applicant's Address: c/o Huntington Asset Services, Inc., 2960 N. Meridian St., Suite 300, Indianapolis, IN 46208.

FocusShares Trust [File No. 811–22128]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On or about August 30, 2012, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $1,984,119 were incurred in connection with the liquidation; $18,901 of which was paid by applicant and the remaining was paid by FocusShares, LLC, applicant's investment adviser.

Filing Date: The application was filed on June 17, 2013.

Applicant's Address: 700 Maryville Centre Drive, St. Louis, MO 63141.

Hatteras Variable Trust [File No. 811–22660]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 26, 2013, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on June 28, 2013.

Applicant's Address: 8540 Colonnade Center Drive, Suite 401, Raleigh, NC 27615.

Javelin Exchange-Traded Trust [File No. 811–22125]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 12, 2011, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of less than $5,000 incurred in connection with the liquidation were paid by Javelin Investment Management LLC, applicant's investment adviser.

Filing Date: The application was filed on June 28, 2013.

Applicant's Address: 338 The Great Road, Princeton, NJ 08540.

Rochdale Investment Trust [File No. 811–8685]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to CNI Charter Funds and, on March 29, 2013, made a final distribution to its shareholders based on net asset value. Expenses of $334,000 incurred in connection with the reorganization were paid by Rochdale Investment Management, LLC, applicant's investment adviser.

Filing Date: The application was filed on July 1, 2013.

Applicant's Address: 570 Lexington Ave., New York, NY 10022.

Stonebridge Funds Trust [File No. 811–749]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has transferred its assets to Stonebridge Small-Cap Growth Fund, a series of Financial Investors Trust, and, on February 19, 2013, made a final distribution to its shareholders based on net asset value. Expenses of $148,185 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on May 14, 2013.

Applicant's Address: 1290 Broadway, Suite 1100, Denver, CO 80203.

Multi-Manger Portfolio, LLC [File No. 811–22300]

Multi-Manager TEI Portfolio, LLC [File No. 811–22301]

Multi-Manager Master Portfolio, LLC [file No. 811–22302]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering. Each applicant will continue to operate as a private investment fund in reliance on section 3(c)(7) of the Act.

Filing Date: The applications were filed on July 10, 2013.

Applicants' Address: 150 South U.S. Highway 1, Suite 500, Jupiter, FL 33477.

Separate Account III of Integrity Life Insurance Company [File No. 811–8728]

Separate Account III of National Integrity Life Insurance Company [File No. 811–8752]

Summary: Each Applicant seeks an order declaring that it has ceased to be an investment company. Each Applicant is a registered separate account that is organized as a unit investment trust. The management of each Applicant's depositor gave authorization for the abandonment of the respective registration because the relevant separate account has been inactive during its existence. Applicants do not have, nor have they ever had, assets or shareholders. Applicants are not parties to any litigation or administrative proceeding and are not engaged in or intending to engage in any business activities.

Filing Dates: Each Applicant's application was filed on May 24, 2013.

Applicants' Address: 400 Broadway, Cincinnati, OH 45202.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–18593 Filed 8–1–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30634; 812–13963]

Exchange Traded Concepts, LLC, et al.; Notice of Application

July 29, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY: *Summary of Application:* Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares. The requested order would supersede a prior order (''Prior Order'').[1]

Applicants: Exchange Traded Concepts, LLC (''Current Adviser''), Exchange Traded Concepts Trust, Exchange Traded Concepts Trust II, ETF Series Solutions (each, a ''Trust''), SEI Investments Distribution Co. (''SEI''), Quasar Distributors, LLC (''Quasar'') and Foreside Fund Services, LLC (''Foreside'' and each of SEI, Quasar and Foreside, a ''Distributor'').

DATES: *Filing Dates:* The application was filed on September 21, 2011 and amended on March 30, 2012, September 7, 2012, February 4, 2013, June 21, 2013, July 3, 2013, and July 15, 2013. *Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 23, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: the Current Advisor and the Trusts, 2545 South Kelly Avenue, Suite C, Edmond, OK 73013; SEI, 1 Freedom Valley Drive, Oaks, PA 19456; Quasar, 615 East Michigan Street, 4th Floor, Milwaukee, WI 53202; and Foreside, 3 Canal Plaza, Suite 100, Portland, ME 04101.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel at (202) 551–6873, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Trust is a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series.

2. The Current Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and is the investment adviser to the Funds (as defined below). Any other Adviser (as defined below) will also be registered as an investment adviser under the Advisers Act. The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds (each, a ''Sub-Adviser''). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. A Distributor will serve as the principal underwriter and distributor for each of the Funds. Applicants request that the order also apply to any other future principal underwriter and distributor to Future Funds (as defined below) (''Future Distributor''), provided that any such Future Distributor complies with the terms and conditions of the application. Each Distributor is not, and no Future Distributor will be,

[1] In the Matter of FaithShares Trust, *et al.,* Investment Company Act Release Nos. 28991 (Nov. 5, 2009) (notice) and 29065 (Dec. 1, 2009) (order).

affiliated with any Exchange (as defined below).

4. The Trusts currently offer a number of series, each of which tracks a particular index and operates as an exchange-traded fund (''ETF'') (the ''Current Funds''). Applicants request that the order apply to the Current Funds and any additional series of a Trust, and any other open-end management investment company or series thereof, that may be created in the future (''Future Funds'' and together with the Current Funds, ''Funds''), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Any Future Fund will (a) be advised by the Current Adviser or an entity controlling, controlled by, or under common control with the Current Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.[2]

5. Each Fund holds or will hold certain securities (''Portfolio Securities'') selected to correspond generally to the performance of its Underlying Index. Certain Funds will be based on Underlying Indexes comprised solely of equity and/or fixed income securities issued by one or more of the following categories of issuers: (i) domestic issuers and (ii) non-domestic issuers meeting the requirements for trading in U.S. markets. Other Funds will be based on Underlying Indexes which will be comprised of foreign and domestic or solely foreign equity and/or fixed income securities (''Foreign Funds'').

6. Applicants represent that each Fund will invest at least 80% of its assets (excluding securities lending collateral) in the component securities of its respective Underlying Index (''Component Securities'') and TBA Transactions,[3] and in the case of Foreign Funds, Component Securities and Depositary Receipts [4] representing Component Securities. Each Fund may also invest up to 20% of its assets in certain index futures, options, options on index futures, swap contracts or other derivatives, as related to its respective Underlying Index and its Component Securities, cash and cash equivalents, other investment companies, as well as in securities and other instruments not included in its Underlying Index but which the Adviser believes will help the Fund track its Underlying Index. A Fund may also engage in short sales in accordance with its investment objective.

7. Each Trust may offer Funds that seek to track Underlying Indexes constructed using 130/30 investment strategies (''130/30 Funds'') or other long/short investment strategies (''Long/Short Funds''). Each Long/Short Fund will establish (i) exposures equal to approximately 100% of the long positions specified by the Long/Short Index [5] and (ii) exposures equal to approximately 100% of the short positions specified by the Long/Short Index. Each 130/30 Fund will include strategies that: (i) Establish long positions in securities so that total long exposure represents approximately 130% of a Fund's net assets; and (ii) simultaneously establish short positions in other securities so that total short exposure represents approximately 30% of such Fund's net assets. Each Business Day (as defined below), for each Long/Short Fund and 130/30 Fund, the Adviser will provide full portfolio transparency on the Fund's publicly available Web site (''Web site'') by making available the Fund's Portfolio Holdings (as defined below) before the commencement of trading of Shares on the Listing Exchange (as defined below).[6] The information provided on the Web site will be formatted to be reader-friendly.

8. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all, of the Component Securities of its Underlying Index. Applicants state that a Fund using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5%.

9. Each Fund will be entitled to use its Underlying Index pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains the Underlying Index (each, an ''Index Provider'') or a sub-licensing arrangement with the Adviser, which will have a licensing agreement with such Index Provider.[7] A ''Self-Indexing Fund'' is a Fund for which an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of such affiliated person (''Second-Tier Affiliate''), of a Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor (each, an ''Affiliated Index Provider'') will serve as the Index Provider. In the case of Self-Indexing Funds, an Affiliated Index Provider will create a proprietary, rules-based methodology to create Underlying Indexes (each an ''Affiliated Index'').[8]

[2] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. In addition, all of the applicants to the Prior Order have been named as applicants, and applicants will not continue to rely on the Prior Order if the requested order is issued. A Fund of Funds (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[3] A ''to-be-announced transaction'' or ''TBA Transaction'' is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

[4] Depositary receipts representing foreign securities (''Depositary Receipts'') include American Depositary Receipts and Global Depositary Receipts. The Funds may invest in Depositary Receipts representing foreign securities in which they seek to invest. Depositary Receipts are typically issued by a financial institution (a ''depositary bank'') and evidence ownership interests in a security or a pool of securities that have been deposited with the depositary bank. A Fund will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated person of a Fund, the Adviser or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Fund.

[5] Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.''

[6] Under accounting procedures followed by each Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[7] The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider (or in case of a sub-licensing agreement, the Adviser) must provide the use of the Affiliated Indexes and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

[8] The Affiliated Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be ''investment companies'' in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or sub-adviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or sub-adviser (''Unaffiliated Accounts''). The Affiliated Accounts and the Unaffiliated Accounts, like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Indexes or a

Continued

Except with respect to the Self-Indexing Funds, no Index Provider is or will be an Affiliated Person, or a Second-Tier Affiliate, of a Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor.

10. Applicants recognize that Self-Indexing Funds could raise concerns regarding the ability of the Affiliated Index Provider to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who have knowledge of changes to an Underlying Index prior to the time that information is publicly disseminated. Prior orders granted to self-indexing ETFs (''Prior Self-Indexing Orders'') addressed these concerns by creating a framework that required: (i) Transparency of the Underlying Indexes; (ii) the adoption of policies and procedures not otherwise required by the Act designed to mitigate such conflicts of interest; (iii) limitations on the ability to change the rules for index compilation and the component securities of the index; (iv) that the index provider enter into an agreement with an unaffiliated third party to act as ''Calculation Agent;'' and (v) certain limitations designed to separate employees of the index provider, adviser and Calculation Agent (clauses (ii) through (v) are hereinafter referred to as ''Policies and Procedures'').[9]

11. Instead of adopting the same or similar Policies and Procedures, applicants propose that each day that a Fund, the NYSE and the national securities exchange (as defined in section 2(a)(26) of the Act) (an ''Exchange'') on which the Fund's Shares are primarily listed (''Listing Exchange'') are open for business, including any day that a Fund is required to be open under section 22(e) of the Act (a ''Business Day''), each Self-Indexing Fund will post on its Web site, before commencement of trading of Shares on the Listing Exchange, the identities and quantities of the portfolio securities, assets, and other positions held by the Fund that will form the basis for the Fund's calculation of its NAV at the end of the Business Day (''Portfolio Holdings''). Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will provide an effective alternative mechanism for addressing any such potential conflicts of interest.

12. Applicants represent that each Self-Indexing Fund's Portfolio Holdings will be as transparent as the portfolio holdings of existing actively managed ETFs. Applicants observe that the framework set forth in the Prior Self-Indexing Orders was established before the Commission began issuing exemptive relief to allow the offering of actively-managed ETFs.[10] Unlike passively-managed ETFs, actively-managed ETFs do not seek to replicate the performance of a specified index but rather seek to achieve their investment objectives by using an ''active'' management strategy. Applicants contend that the structure of actively managed ETFs presents potential conflicts of interest that are the same as those presented by Self-Indexing Funds because the portfolio managers of an actively managed ETF by definition have advance knowledge of pending portfolio changes. However, rather than requiring Policies and Procedures similar to those required under the Prior Self-Indexing Orders, Applicants believe that actively managed ETFs address these potential conflicts of interest appropriately through full portfolio transparency, as the conditions to their relevant exemptive relief require.

13. In addition, applicants do not believe the potential for conflicts of interest raised by the Adviser's use of the Underlying Indexes in connection with the management of the Self Indexing Funds and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.[11]

14. The Adviser and any Sub-Adviser has adopted or will adopt, pursuant to Rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, the Current Adviser has adopted policies and procedures as required under Section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Securities Exchange Act of 1934 (''Exchange Act'') or the rules thereunder, of material non-public information by the Current Adviser or an associated person (''Inside Information Policy''). Any Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics [12] and Inside Information Policy of the Adviser and Sub-Advisers, personnel of those entities with knowledge about the composition of the Portfolio Deposit [13] will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, an Index Provider will not provide any information relating to changes to an Underlying Index's methodology for the inclusion of component securities, the inclusion or exclusion of specific component securities, or methodology for the calculation or the return of component securities, in advance of a public announcement of such changes by the Index Provider. The Adviser will also include under Item 10.C. of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of

representative sample of such constituents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

[9] *See, e.g.,* In the Matter of WisdomTree Investments Inc., *et al.,* Investment Company Act Release Nos. 27324 (May 18, 2006) (notice) and 27391 (Jun. 12, 2006) (order); In the Matter of IndexIQ ETF Trust, *et al.,* Investment Company Act Release Nos. 28638 (Feb. 27, 2009) (notice) and 28653 (Mar. 20, 2009) (order); and Van Eck Associates Corporation, *et al,,* Investment Company Act Release Nos. 29455 (Oct. 1, 2010) (notice) and 29490 (Oct. 26, 2010) (order).

[10] *See, e.g.,* In the Matter of Huntington Asset Advisors, Inc., *et al.,* Investment Company Act Release Nos. 30032 (Apr. 10, 2012) (notice) and 30061 (May 8, 2012) (order); In the Matter of Russell Investment Management Co., *et al.,* Investment Company Act Release Nos. 29655 (Apr. 20, 2011) (notice) and 29671 (May 16, 2011) (order); In the Matter of Eaton Vance Management, *et al.,* Investment Company Act Release Nos. 29591 (Mar. 11, 2011) (notice) and 29620 (Mar. 30, 2011) (order) and; In the Matter of iShares Trust, *et al.,* Investment Company Act Release Nos. 29543 (Dec. 27, 2010) (notice) and 29571 (Jan. 24, 2011) (order).

[11] *See, e.g.,* rule 17j–1 under the Act and Section 204A under the Advisers Act and Rules 204A–1 and 206(4)–7 under the Advisers Act.

[12] The Adviser has also adopted or will adopt a code of ethics pursuant to rule 17j–1 under the Act and Rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in rule 17j–1) from engaging in any conduct prohibited in rule 17j–1 (''Code of Ethics'').

[13] The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing is referred to as the ''Portfolio Deposit.''

interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

15. To the extent the Self-Indexing Funds transact with an Affiliated Person of the Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees (''Board'') will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, the Adviser, Affiliated Persons of the Adviser (''Adviser Affiliates'') and Affiliated Persons of any Sub-Adviser (''Sub-Adviser Affiliates'') may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by the Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission.

16. In light of the foregoing, applicants believe it is appropriate to allow the Self-Indexing Funds to be fully transparent in lieu of Policies and Procedures from the Prior Self-Indexing Orders discussed above.

17. The Shares of each Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[14] On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions)[15] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[16] (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind[17] will be excluded from the Deposit Instruments and the Redemption Instruments;[18] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;[19] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

18. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;[20] (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC (as defined below); or (ii) in the case of Foreign Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[21]

19. Creation Units will consist of specified large aggregations of Shares, e.g., at least 25,000 Shares, and it is expected that the initial price of a Creation Unit will range from $1 million to $10 million. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant'' which is either (1) a ''Participating Party,'' i.e., a broker-dealer (''Broker'') or other participant in the Continuous Net Settlement System of the NSCC, a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company (''DTC'') (''DTC Participant''), which, in either case, has signed a participant agreement

[14] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

[15] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

[16] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[17] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[18] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

[19] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants (as defined below) on a given Business Day.

[20] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

[21] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

with the Distributor. The Distributor will be responsible for transmitting the orders to the Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order which is not submitted in proper form.

20. Each Business Day, before the open of trading on the Listing Exchange, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Deposit Instruments.

21. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Fund's existing shareholders. Each Fund will impose purchase or redemption transaction fees (''Transaction Fees'') in connection with effecting such purchases or redemptions of Creation Units. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.[22] The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

22. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (each, a ''Market Maker'') and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

23. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[23] The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

24. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed through an Authorized Participant. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

25. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a ''mutual fund.'' Instead, each such Fund will be marketed as an ''ETF.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state

[22] Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

[23] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for underlying foreign Portfolio Securities held by a Foreign Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fourteen (14) calendar days. Accordingly, with respect to Foreign Funds only, applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow Foreign Funds to pay redemption proceeds within fourteen calendar days following the tender of Creation Units for redemption.[24]

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of a Foreign Fund to be made within fourteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fourteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

[24] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may otherwise have under rule 15c6–1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and unit investment trusts (''UITs'') that are not advised or sponsored by the Adviser, and not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act as the Funds (such management investment companies are referred to as ''Investing Management Companies,'' such UITs are referred to as ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are collectively referred to as ''Funds of Funds''), to acquire Shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any Broker registered under the Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act.

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Fund of Funds Adviser'') and may be sub-advised by investment advisers within the meaning of section 2(a)(20)(B) of the Act (each, a ''Fund of Funds Sub-Adviser''). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds,

excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over a Fund.[25] To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor (''Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser (''Fund of Funds Sub-Advisory Group'').

15. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. In addition, under condition B.5., a Fund of Funds Adviser, or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[26]

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Fund (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Funds and not in any other investment company.

18. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Fund would still retain its ability to reject any initial investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A) by declining to enter into a FOF Participation Agreement with the Fund of Funds.

Sections 17(a)(1) and (2) of the Act

19. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser or an entity controlling, controlled by or under common control with an Adviser (an ''Affiliated Fund''). Any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Funds, may be deemed affiliated persons of the Trust or such Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more

[25] A ''Fund of Funds Affiliate'' is a Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

[26] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

Affiliated Funds making that investor a Second-Tier Affiliate of the Funds.

20. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are Affiliated Persons of the Funds, or Second-Tier Affiliates of the Funds, solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds, to effectuate purchases and redemptions ''in-kind.''

21. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making ''in-kind'' purchases or ''in-kind'' redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for ''in-kind'' purchases of Creation Units and the redemption procedures for ''in-kind'' redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Fund will be valued in the identical manner as those Portfolio Securities currently held by such Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that ''in-kind'' purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with each Fund's objectives and with the general purposes of the Act. Applicants believe that ''in-kind'' purchases and redemptions will be made on terms reasonable to Applicants and any affiliated persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Securities held by a Fund is identical to that used for calculating ''in-kind'' purchase or redemption values and therefore creates no opportunity for affiliated persons or Second-Tier Affiliates of applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Similarly, applicants submit that, by using the same standards for valuing Portfolio Securities held by a Fund as are used for calculating ''in-kind'' redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions ''in-kind'' will help each Fund to track closely its Underlying Index and therefore aid in achieving the Fund's objectives.

22. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit a Fund that is an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[27] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.[28] Applicants believe that any proposed transactions directly between the Funds and Funds of Funds will be consistent with the policies of each Fund of Funds. The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the requested order, the Shares of such Fund will be listed on an Exchange.

3. Neither a Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of calculation of the relevant Fund's NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. Each Self-Indexing Fund, Long/Short Fund and 130/30 Fund will post on the Web site on each Business Day, before commencement of trading of Shares on the Exchange, the Fund's Portfolio Holdings.

6. No Adviser or any Sub-Adviser, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for a Fund through a transaction in which the Fund could not engage directly.

B. Section 12(d)(1) Relief

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same

[27] Although applicants believe that most Funds of Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund, a Fund of Funds might seek to transact in Creation Units directly with a Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

[28] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to a Fund for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund or Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Fund exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Fund, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''non-interested Board members''), will determine that any consideration paid by the Fund to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–l under the Act) received from a Fund by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the applicable Trust will execute a FOF Participation Agreement stating, without limitation, that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the

advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent the Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund to acquire securities of one or more investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70055; File No. SR–NYSEArca–2013–52]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of the First Trust Morningstar Managed Futures Strategy Fund Under NYSE Arca Equities Rule 8.600

July 29, 2013.

I. Introduction

On May 15, 2013, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the First Trust Morningstar Futures Strategy Fund (''Fund'') [3] under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on May 30, 2013.[4] The Commission received no comments on the proposal. On July 24, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares will be offered by First Trust Exchange-Traded Fund V (''Trust''),[6] a statutory trust organized under the laws of the State of Massachusetts and registered with the Commission as an open-end management investment company. The investment adviser to the Fund is First Trust Advisors L.P. (''Adviser''). First Trust Portfolios L.P. will be the principal underwriter and distributor of the Shares. The Bank of New York Mellon Corporation will serve as administrator, custodian, and transfer agent for the Fund. The Exchange states that the Adviser is not a broker-dealer but is affiliated with a broker-dealer and has implemented a fire wall between it and its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.[7]

The Exchange states that the Commodity Futures Trading Commission (''CFTC'') has recently adopted substantial amendments to CFTC Rule 4.5 relating to the permissible exemptions and conditions for reliance on exemptions from registration as a commodity pool operator (''CPO''). As a result of the instruments that will be held by the Fund, the Adviser has registered as a CPO and is also a member of the National Futures Association.

Investments

The Fund will seek to achieve positive total returns that are not directly correlated to broad market equity or fixed income returns. The Fund uses as a benchmark the Morningstar(R) Diversified Futures Index(SM) (the ''Benchmark''), which is developed, maintained and sponsored by Morningstar, Inc. (''Morningstar'') [8] and seeks to exceed the performance of the Benchmark. The Fund is not an ''index tracking'' ETF. However, the Fund will generally seek to hold similar instruments to those included in the Benchmark and seek exposure to commodities, currencies, and equity indexes included in the Benchmark. The Benchmark seeks to reflect trends (in either direction) in the commodity futures, currency futures, and financial futures markets. The Benchmark is a fully collateralized futures index that offers diversified exposure to global markets through highly-liquid, exchange-listed futures contracts on commodities, currencies, and equity indexes. However, the Fund is not obligated to invest in the same instruments included in the Benchmark. The Exchange states that there can be no assurance that the Fund's performance

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See infra* note 5 (noting the change in the name of the Fund in Amendment No. 1).

[4] *See* Securities Exchange Act Release No. 69636 (May 24, 2013), 78 FR 32503 (''Notice'').

[5] In Amendment No. 1, the Exchange: (i) Changed the name of the Fund to the First Trust Morningstar Futures Managed Strategy Fund; (ii) clarified that the Fund will seek to exceed, rather than track, the performance of its benchmark (as described below); and (iii) made conforming changes to reflect the clarification in (ii). The Exchange explained that the changes in Amendment No. 1 are intended to ensure that the representations in the Exchange's 19b–4 filing correspond to the representations made by the Trust in its application for certain exemptive relief under the 1940 Act applicable to the Fund and other actively-managed funds of the Trust. *See* Investment Company Act Release No. 30029 (April 20, 2012) (File No. 812–13795). According to the Exchange, the changes contained in Amendment No. 1 do not represent a change in the manner in which the Fund would be operated as described in the Exchange's original 19b–4 filing. In addition, the revised language conforms to language included in an amendment to the Trust's registration statement filed with the Commission on July 18, 2013. *See infra* note 6 and accompanying text.

[6] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On July 18, 2013, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (the ''1933 Act'') and under the 1940 Act relating to the Fund (File Nos. 333–181507 and 811–22709) (''Registration Statement''). In addition, the Commission issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795).

[7] *See* NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

[8] Morningstar is not a broker-dealer but is affiliated with a broker-dealer and, with respect to such broker-dealer affiliate, has implemented a fire wall and procedures designed to prevent the illicit use and dissemination of material, non-public information regarding the Benchmark.

will exceed the performance of the Benchmark at any time.

The Fund is not sponsored, endorsed, sold or promoted by Morningstar. Morningstar's only relationship to the Fund is the licensing of certain service marks and service names of Morningstar and of the Benchmark, which is determined, composed, and calculated by Morningstar without regard to the Adviser or the Fund. Morningstar has no obligation to take the needs of the Adviser or the Fund into consideration in determining, composing, or calculating the Benchmark.

Under normal market conditions,[9] the Fund, through FT Cayman Subsidiary, a wholly-owned subsidiary of the Fund organized under the laws of the Cayman Islands (''Subsidiary''), will invest in a diversified portfolio of exchange-listed commodity futures, currency futures, and equity index futures (collectively, ''Futures Instruments'') with an aggregate notional value substantially equal to the Fund's net assets.

The Fund will not invest directly in Futures Instruments. The Fund expects to exclusively gain exposure to these investments by investing in the Subsidiary. The Subsidiary will be advised by the Adviser.[10] The Fund's investment in the Subsidiary is intended to provide the Fund with exposure to commodity markets within the limits of current federal income tax laws applicable to investment companies, such as the Fund, which limit the ability of investment companies to invest directly in the Futures Instruments. The Subsidiary will have the same investment objective as the Fund, but unlike the Fund, it may invest without limitation in Futures Instruments. Except as otherwise noted, references to the Fund's investments may also be deemed to include the Fund's indirect investments through the Subsidiary. The Fund will invest up to 25% of its total assets in the Subsidiary. The Subsidiary's investments will provide the Fund with exposure to domestic and international markets.

The Fund will invest a substantial portion of its assets in fixed income securities that include U.S. government and agency securities, money market instruments,[11] overnight and fixed-term repurchase agreements, cash, and other cash equivalents. The Fund will use the fixed-income securities as investments and to meet asset coverage tests resulting from the Subsidiary's derivative exposure on a day-to-day basis. The Fund may also invest directly in exchange-traded funds (''ETFs'') [12] and other investment companies that provide exposure to commodities, equity securities, and fixed income securities, to the extent permitted under the 1940 Act. Under the 1940 Act, the Fund's investment in investment companies is limited to, subject to certain exceptions: (i) 3% of the total outstanding voting stock of any one investment company; (ii) 5% of the Fund's total assets with respect to any one investment company; and (iii) 10% of the Fund's total assets of investment companies in the aggregate. As a whole, the Fund's investments seek to exceed the investment returns of the Benchmark within the limitations of the federal tax requirements applicable to regulated investment companies.

The Benchmark and the Subsidiary's holdings in futures contracts will consist of futures contracts providing long, short, and flat exposure, which include, but are not limited to, commodities, equity indexes, and currencies (Euro, Japanese Yen, British Pound, Canadian Dollar, Australian Dollar, and Swiss Franc).[13] The Subsidiary's exposure will generally be weighted 50% in commodity futures, 25% in equity futures, and 25% in currency futures. The base weights typically will be rebalanced quarterly to maintain the 50%/25%/25% allocation.

The Subsidiary's commodity- and currency-linked investments generally will be limited to investments in listed futures contracts that provide exposure to commodity and non-U.S. currency returns. The Subsidiary will also invest in exchange-listed equity index futures. The Fund and the Subsidiary also may enter into repurchase agreements with counterparties that are deemed to present acceptable credit risks. A repurchase agreement is a transaction in which the Fund and the Subsidiary purchase securities or other obligations from a bank or securities dealer and simultaneously commit to resell them to the bank or securities dealer at an agreed-upon date or upon demand and at a price reflecting a market rate of interest unrelated to the coupon rate or maturity of the purchased obligations.

The Fund, through the Subsidiary, will attempt to capture the economic benefit derived from rising and declining trends based on the moving average price changes of commodity futures, currency futures, and equity index futures. Each of the Subsidiary's investments will generally be positioned long, short, or flat based on its price relative to its average price over a recent period, with the ability to change positions as frequently as daily if the Benchmark is so adjusted. The Fund, through the Subsidiary, may have a higher or lower exposure to any sector or component within the Benchmark at any time.

The Subsidiary's shares will be offered only to the Fund, and the Fund will not sell shares of the Subsidiary to other investors. The Fund will not invest in any non-U.S. equity securities (other than shares of the Subsidiary), and the Subsidiary will not invest in any non-U.S. equity securities.

The Fund's investment in the Subsidiary will be designed to help the Fund achieve exposure to commodity returns in a manner consistent with the federal tax requirements applicable to the Fund and other regulated investment companies.

Other Investments

The Fund may from time to time purchase securities on a ''when-issued''

[9] The term ''under normal market conditions'' includes, but is not limited to: The absence of extreme volatility or trading halts in the fixed income markets, futures markets, or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[10] The Subsidiary is not registered under the 1940 Act and is not directly subject to its investor protections, except as noted in the Registration Statement. However, the Subsidiary is wholly-owned and controlled by the Fund and is advised by the Adviser. Therefore, because of the Fund's ownership and control of the Subsidiary, the Subsidiary would not take action contrary to the interests of the Fund or its shareholders. The Fund's Board of Trustees (''Board'') has oversight responsibility for the investment activities of the Fund, including its expected investment in the Subsidiary, and the Fund's role as the sole shareholder of the Subsidiary. The Adviser receives no additional compensation for managing the assets of the Subsidiary. The Subsidiary will also enter into separate contracts for the provision of custody, transfer agency, and accounting agent services with the same or with affiliates of the same service providers that provide those services to the Fund.

[11] The Fund may invest in shares of money market funds to the extent permitted by the 1940 Act.

[12] For purposes of this proposed rule change, ETFs include securities such as those listed and traded under NYSE Arca Equities Rule 5.2(j)(3) (Investment Company Units), 8.100 (Portfolio Depositary Receipts), and 8.600 (Managed Fund Shares).

[13] According to the Exchange, to be ''long'' means to hold or be exposed to a security or instrument with the expectation that its value will increase over time. To be ''short'' means to sell or be exposed to a security or instrument with the expectation that it will fall in value. To be ''flat'' means to move a position to cash if a short signal is triggered in a security or instrument. The Fund, through the Subsidiary, will benefit if it has a long position in a security or instrument that increases in value or a short position in a security or instrument that decreases in value. Conversely, the Fund, through the Subsidiary, will be adversely impacted if it holds a long position in a security or instrument that declines in value and a short position in a security or instrument that increases in value.

or other delayed-delivery basis. The price of securities purchased in such transactions is fixed at the time the commitment to purchase is made, but delivery and payment for the securities take place at a later date.

The Fund may invest in certificates of deposit issued against funds deposited in a bank or savings and loan association. In addition, the Fund may invest in bankers' acceptances, which are short-term credit instruments used to finance commercial transactions.

The Fund may invest in bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest. In addition, the Fund may invest in commercial paper, which are short-term unsecured promissory notes, including variable rate master demand notes issued by corporations to finance their current operations. Master demand notes are direct lending arrangements between the Fund and a corporation. The Fund may invest in commercial paper only if it has received the highest rating from at least one nationally recognized statistical rating organization or, if unrated, judged by First Trust to be of comparable quality.

The Fund may also invest a portion of its assets in exchange-traded pooled investment vehicles (''Underlying ETPs'') other than registered investment companies that invest principally in commodities.[14]

Investment Limitations

While the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2X and 3X) of the Fund's Benchmark. Further the Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

The Fund may not invest more than 25% of the value of its total assets in securities of issuers in any one industry or group of industries.[15] This restriction does not apply to obligations issued or guaranteed by the U.S. Government, its agencies, or instrumentalities.

The Fund will not purchase securities of open-end or closed-end investment companies except in compliance with the 1940 Act.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities and master demand notes. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[16]

The Fund or the Subsidiary will not invest in options on commodity futures, structured notes, equity-linked derivatives, forwards, or swap contracts.

The Fund intends to qualify, and to elect to be treated as, a separate regulated investment company under Subchapter M of the Internal Revenue Code.[17]

A more detailed description of the Shares, Fund, Subsidiary, Benchmark, investment strategies and risks, creation and redemption procedures, and fees, among other things, is included in the Notice and the Registration Statement, as applicable.[18]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[20] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the rules of the Exchange, including the requirements of NYSE Arca Equities Rule 8.600, to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[21] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[22] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of net asset value (''NAV'') at the end of the business day.[23] The NAV of the

[14] The term ''Underlying ETPs'' includes Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Trust Units (as described in NYSE Arca Equities Rule 8.500). The Underlying ETPs all will be listed and traded in the U.S. on registered exchanges.

[15] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[16] Long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[17] 26 U.S.C. 851.

[18] *See supra* notes 4 and 6, respectively.

[19] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[22] According to the Exchange, several major market data vendors widely disseminate Portfolio Indicative Values taken from CTA or other data feeds.

[23] On a daily basis, for each portfolio security and other financial instrument of the Fund and of the holdings of the Subsidiary, the Fund will disclose the following information on the Fund's Web site: ticker symbol (if applicable); name of security, futures contract, and/or financial instrument; number of shares, if applicable, and dollar value of each security, futures contract, and/or financial instrument held; and percentage weighting of each

Continued

Fund will be determined at the close of trading (normally 4:00 p.m. Eastern Time) on each day the New York Stock Exchange is open for business. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The intra-day, closing, and settlement prices of the portfolio investments (*e.g.,* Futures Instruments, ETFs, underlying ETPs, and fixed income securities) are also readily available from the national securities and futures exchanges trading such securities and futures, as applicable, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[24] In addition, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares may be halted. The Exchange may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[25]

Further, the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange,[26] will communicate as needed regarding trading in the Shares with other markets that are members of the Intermarket Surveillance Group (''ISG''), including all U.S. securities exchanges and futures exchanges on which futures contracts included in the Benchmark are traded or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that the Adviser is affiliated with a broker-dealer, and the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.[27]

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of its proposal to list and trade the Shares, the Exchange has made representations, including:

(1) The Shares will conform to the initial listing criteria applicable under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[28] These procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (i) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (ii) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (iii) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (iv) how information regarding the Portfolio Indicative Value is disseminated; (v) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[29] as provided by NYSE Arca Equities Rule 5.3.[30]

(6) The Chicago Mercantile Exchange (''CME''), the Chicago Board of Trade, the New York Mercantile Exchange (''NYMEX''), and ICE Futures U.S. are members of ISG, and the Exchange may obtain market surveillance information with respect to transactions occurring on the Commodity Exchange (''COMEX'') pursuant to the ISG memberships of CME and NYMEX. The Exchange has in place a comprehensive surveillance sharing agreement with the Kansas City Board of Trade and ICE Futures U.K. relating to trading of applicable components of the Benchmark. In addition, with respect to

security, futures contract, and/or financial instrument held. The Web site information will be publicly available at no charge.

[24] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[25] *See* NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading in Shares will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[26] The Exchange states that, while FINRA surveils trading on the Exchange pursuant to a regulatory services agreement, the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[27] *See supra* note 7. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has: (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[28] *See supra* note 26.

[29] 17 CFR 240.10A–3.

[30] *See* Notice, *supra* note 4, 78 FR 32506.

futures contracts in which the Subsidiary invests, not more than 10% of the weight of such futures contracts in the aggregate shall consist of futures contracts whose principal trading market: (i) Is not a member of ISG; or (ii) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement, provided that, so long as the Exchange may obtain market surveillance information with respect to transactions occurring on the COMEX pursuant to the ISG memberships of CME and NYMEX, futures contracts whose principal trading market is COMEX shall not be subject to the prohibition in (i) above.

(7) Neither the Fund nor the Subsidiary will invest in options on commodity futures, structured notes, equity-linked derivatives, forwards, or swap contracts. The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

(8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities and master demand notes.

(9) The Fund will not invest in any non-U.S. equity securities, other than shares of the Subsidiary, and the Subsidiary will not invest in any non-U.S. equity securities.

(10) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice, as modified by Amendment No. 1.[31]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act [32] and the rules and regulations thereunder applicable to a national securities exchange

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2013–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2013–52. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2013–52 and should be submitted on or before August 23, 2013.

V. Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1

As discussed above, the Exchange submitted Amendment No. 1 to ensure that its Form 19b–4 corresponds to the representations made by the Trust in its application for certain exemptive relief under the 1940 Act applicable to the Fund and other actively-managed funds of the Trust.[33] According to the Exchange, the revised language does not represent a change in the manner in which the Fund would be operated as described in the Exchange's original 19b–4 filing. In addition, the revised language conforms to language included in an amendment to the Trust's registration statement filed with the Commission on July 18, 2013.[34]

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[35] for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice in the **Federal Register**.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[36] that the proposed rule change (SR–NYSEArca–2013–52), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–18594 Filed 8–1–13; 8:45 am]

BILLING CODE 8011–01–P

[31] The Commission notes that it does not regulate the market for futures contracts in which the Fund plans to take positions, which, in the U.S., is the responsibility of the CFTC. The CFTC has the authority to set limits on the positions that any person may take in futures subject to its jurisdiction. These limits may be directly set by the CFTC or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

[32] 15 U.S.C. 78f(b)(5).

[33] *See supra* note 5.

[34] *See supra* note 6 and accompanying text.

[35] 15 U.S.C. 78f(b)(2).

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70059; File No. SR–ISE–2013–42]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To List Options on the Nations VolDex Index

July 29, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2013, the International Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules for the listing and trading on the Exchange of options on the Nations VolDex index, a new index that measures changes in implied volatility of the SPDR® S&P® ETF. The Exchange also proposes to list and trade long-term options on the Nations VolDex index. Options on the Nations VolDex index will be cash-settled and will have European-style exercise provisions. The text of the proposed rule change is available on the Exchange's Web site *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to provide for the listing and trading on the Exchange of options on a new index that measures changes in implied volatility of the SPDR® S&P® Exchange Traded Fund (ETF) (commonly known and referred to by its ticker symbol, SPY). Options on the Nations VolDex index (the ''Index'') will be cash-settled and will have European-style exercise provisions. In addition to regular options, the Exchange proposes to also list long-term options on the Index. The Index is calculated using published real-time bid/ask quotes of SPY options. The Index represents annualized implied volatility and is quoted in percentage points.

Index Design and Composition

The calculation of the Index is based on the methodology developed by NationsShares, a firm that develops proprietary derivatives-based indexes and options-enhanced indexes. The Index will be calculated and maintained by a calculation agent acting on behalf of NationsShares. The Index reflects changes in implied volatility of SPY, historically the largest and most actively traded ETF in the United States as measured by its assets under management and the value of shares traded.

The Index measures the implied volatility of a hypothetical 30-day at-the-money (ATM) SPY put option, by interpolating the prices of synthetic put options that are precisely ATM.[3] The options used in the calculation of the Index are the published first in-the-money (ITM) and the first out-of-the-money (OTM) put options in the front month (*i.e.,* nearest monthly expiration) and second month expirations (*i.e.,* second nearest monthly expiration). Front month options must have at least one week to expiration. On the open of trading on the first business day of a regular option expiration week (*i.e.,* for standard monthly expirations), the options used for the Index will ''roll'' to the next regular expiration month and the following expiration month. The prices used in the calculation of the Index will be the mid-point of the published consolidated bid/ask quote (*i.e.,* the NBBO) in SPY options.

The generalized formula for the Index is:

$$Nations\ VolDex = 100 \times \frac{(43{,}200 - T_1) \times (IV_2 - IV_1)}{(T_2 - T_1)} + IV_1$$

Where:

- 43,200 is the number of minutes in 30 days;
- T_1 is time to expiration of the Front Month options in minutes;
- T_2 is time to expiration of the Second Month options in minutes;
- IV_1 is the implied volatility of the Front Month precisely ATM SPY put option;
- IV_2 is the implied volatility of the Second Month precisely ATM SPY put option.

The implied volatilities of the precisely ATM SPY put options are derived using a three-step process. The first step is to calculate the forward prices for both the front and second month expirations. This is accomplished by evaluating the absolute difference between the call and put option premium at each strike price and identifying the strike price where that absolute difference is the smallest. The forward price is calculated by adding the strike price to the present value of the published call price minus the published put price. The second step is to interpolate the precisely ATM put option price for both the front month and second month expirations. This is accomplished by using each respective month's forward price, the first ITM strike, the first OTM strike, the first ITM put price, and the first OTM put price. The final step is to calculate the implied volatility for the precisely ATM put option for each respective month using the forward price and the precisely ATM put option for that month.

The SPDR® S&P® ETF is the largest and most actively traded ETF in the U.S.[4] According to State Street Global Advisor, the Trustee of SPY, as of June 20, 2013, the net assets under management in SPY was approximately $106.8 billion; the weighted average market capitalization of the portfolio components was approximately $106 billion; the smallest market capitalization was approximately $2.1 billion (Apollo Group Inc., ticker: APOL), and the largest was approximately $395.9 billion (ExxonMobil, ticker: XOM).[5]

For the three months ending June 20, 2013, the average daily volume in SPY shares was 137 million, and the average value of shares traded was $22.1 billion.[6] For the same period, the average daily volume in SPY options was approximately 2.8 million contracts.[7] Open interest in SPY options was approximately 25.2 million contracts.[8]

[3] For the purpose of this rule filing, the term ''precisely at-the-money'' refers to a hypothetical option and strike price.

[4] The SPDR® S&P® ETF holds up to 500 securities listed on U.S. securities exchanges.

[5] *See https://www.spdrs.com/product/fund.seam?ticker=SPY.*

[6] Calculated using data from Bloomberg as of June 20, 2013.

[7] Calculated using data from The Options Clearing Corp. as of June 20, 2013.

[8] Calculated using data from Bloomberg as of June 20, 2013.

As set forth in Exhibit 3–1, following are the characteristics of the Index: (i) The initial index value was 11.49 on January 31, 2005; (ii) the index value on June 20, 2013 was 18.73; (iii) the lowest index value since inception was 8.83 and occurred on January 24, 2007; and (iv) the highest index value since inception was 77.98 and occurred on October 10, 2008.

Index Calculation and Maintenance

As noted above, the Index will be maintained and calculated by a calculation agent acting on behalf of NationsShares. The level of the Index will reflect the current implied volatility of SPY. The Index will be updated on a real-time basis on each trading day beginning at 9:30 a.m. and ending at 4:15 p.m. (New York time). If the current published value of a component is not available, the last published value will be used in the calculation.

Values of the Index will be disseminated every 15 seconds during the Exchange's regular trading hours to market information vendors such as Bloomberg and ThomsonReuters. In the event the Index ceases to be maintained or calculated, or its values are not disseminated every 15 seconds by a widely available source, the Exchange will not list any additional series for trading and will limit all transactions in such options to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.

Exercise and Settlement Value

Options on the Index will expire on the Wednesday that is thirty days prior to the third Friday of the calendar month immediately following the expiring month. Trading in expiring options on the Index will normally cease at 4:15 p.m. (New York time) on the Tuesday preceding an expiration Wednesday. The exercise and settlement value will be calculated on Wednesday at 9:30 a.m. (New York time) using the mid-point of the NBBO for the SPY options used in the calculation of the Index at that time. The exercise-settlement amount is equal to the difference between the settlement value and the exercise price of the option, multiplied by $100. Exercise will result in the delivery of cash on the business day following expiration.

Contract Specifications

The contract specifications for options on the Index are set forth in Exhibit 3–2. The Index is a broad-based index, as defined in Rule 2001(k). Options on the Index are European-style and cash-settled. The Exchange's standard trading hours for index options (9:30 a.m. to 4:15 p.m., New York time) will apply to the Index. The Exchange proposes to apply margin requirements for the purchase and sale of options on the Index that are identical to those applied for its other broad-based index options.

The trading of options on the Index will be subject to the trading halt procedures applicable to other index options traded on the Exchange.[9] Options on the Index will be quoted and traded in U.S. dollars.[10] Accordingly, all Exchange and Options Clearing Corporation members shall be able to accommodate trading, clearance and settlement of the Index without alteration.

The Exchange proposes to set the minimum strike price interval for options on the Index at $1 or greater, as long as the strike price is below $200, in accordance with proposed ISE Rule 2009(c)(7). The Exchange believes that $1 strike price intervals will provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives. Further, as proposed, when new series of options on the Index with a new expiration date are opened for trading, or when additional series of options on the Index in an existing expiration date are opened for trading as the current value of the Index moves substantially from the exercise prices of series already opened, the exercise prices of such new or additional series shall be reasonably related to the current value of the Index at the time such series are first opened for trading.[11] The Exchange, however, proposes to eliminate this range limitation that will limit the number of $1 strikes that may be listed in options on the Index. The Exchange's proposal to set minimum strike price intervals without a range limitation is identical to strike price intervals adopted by CBOE for the CBOE Volatility Index.[12]

The Exchange proposes to adopt minimum trading increments for options on the Index to be $0.05 for series trading below $3, and $0.10 for series trading at or above $3.

The Exchange proposes to list options on the Index in the three consecutive near-term expiration months plus up to three successive expiration months in the March cycle. For example, consecutive expirations of January, February, March, plus June, September, and December expirations would be listed.[13]

The Exchange proposes that there shall be no position or exercise limits for options on the Index. As noted above, the Index will settle using published quotes from its corresponding option, specifically SPY options. Given that there are currently no position limits for SPY options,[14] the Exchange believes it is appropriate for there to be no position or exercise limits for options on the Index. Because the size of the market underlying SPY options is so large, ISE believes that this should dispel any concerns regarding market manipulation. By extension, ISE believes that the same reasoning applies to options on the Index since the value of options on the Index is derived from the volatility of SPY as implied by its options. The Exchange notes that options on CBOE's Volatility Index are also not subject to any position or exercise limits.[15]

The trading of options on the Index shall be subject to the same rules that presently govern the trading of Exchange index options, including sales practice rules, margin requirements, and trading rules. In addition, long-term option series having up to sixty months to expiration may be traded.[16] The trading of long-term options on the Index shall also be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements, and trading rules. Further, pursuant to Supplementary Material .01 and .02 to ISE Rule 2009, the Exchange may also list Short Term Option Series and Quarterly Options Series, respectively, on the Index.

Chapter 6 of the Exchange's rules is designed to protect public customer trading and shall apply to trading in options on the Index. Specifically, ISE Rules 608(a) and (b) prohibit Members from accepting a customer order to purchase or write an option, including options on the Index, unless such customer's account has been approved in writing by a designated Options

[9] *See* ISE Rule 2008(c).

[10] *See* ISE Rule 2009(a)(1).

[11] *See* ISE Rule 2009(c)(3). The term ''reasonably related to the current index value of the underlying index'' means that the exercise price is within thirty percent (30%) of the current index value, as defined in ISE Rule 2009(c)(4).

[12] *See* Securities Exchange Act Release No. 63155 (October 21, 2010), 75 FR 66402 (October 28, 2010) (SR–CBOE–2010–096).

[13] *See* Rule 2009(a)(3).

[14] *See* Securities Exchange Act Release No. 68000 (October 5, 2012), 77 FR 62300 (October 12, 2012) (SR–ISE–2012–81).

[15] *See* Securities Exchange Act Release No. 54019 (June 20, 2006), 71 FR 36569 (June 27, 2006) (SR–CBOE–2006–55). Additionally, the Exchange notes there are currently a number of actively-traded broad-based index options, *i.e.,* DJX, NDX, SPX, that are also not subject to any position or exercise limits.

[16] *See* Rule 2009(b)(1).

Principal of the Member.[17] Additionally, ISE's Rule 610 regarding suitability is designed to ensure that options, including options on the Index, are only sold to customers capable of evaluating and bearing the risks associated with trading in this instrument. Further, ISE Rule 611 permits members to exercise discretionary power with respect to trading options, including options on the Index, in a customer's account only if the Member has received prior written authorization from the customer and the account had been accepted in writing by a designated Options Principal. ISE Rule 611 also requires designated Options Principals or Representatives of a Member to approve and initial each discretionary order, including discretionary orders for options on the Index, on the day the discretionary order is entered. Finally, ISE Rule 609, Supervision of Accounts, Rule 612, Confirmation to Customers, and Rule 616, Delivery of Current Options Disclosure Documents and Prospectus, will also apply to trading in options on the Index.

Finally, a trading license issued by the Exchange will be required for all market makers to effect transactions as a market maker in the Index in accordance with ISE Rule 2013.

Surveillance and Capacity

The Exchange has an adequate surveillance program in place for options traded on the Index and intends to apply those same program procedures that it applies to the Exchange's other options products. Further, the ISE Market Surveillance Department conducts routine surveillance in approximately 30 discrete areas. Index products and their respective symbols are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. This is true for both surveillance system processing and manual processes that support the ISE's surveillance program. Additionally, the Exchange is also a member of the Intermarket Surveillance Group (ISG) under the Intermarket Surveillance Group Agreement, dated June 20, 1994. The members of the ISG include all of the U.S. registered stock and options markets: NYSE MKT LLC, NYSE Arca, Inc., BATS Exchange, Inc., NASDAQ OMX BX, Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, NASDAQ Stock Market LLC, National Stock Exchange, Inc., the New York Stock Exchange LLC, and NASDAQ OMX PHLX, Inc. The ISG members work together to coordinate surveillance and investigative information sharing in the stock and options markets.

The Exchange represents that it has the necessary system capacity to support additional quotations and messages that will result from the listing and trading of options on the Index.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act'') [18] in general, and furthers the objectives of Section 6(b)(5) of the Act [19] in particular in that it will permit options trading in the Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. In particular, the Exchange believes the proposed rule change will further the Exchange's goal of introducing new and innovative products to the marketplace. The Exchange believes that listing options on the Index will provide an opportunity for investors to hedge, or speculate on, the market risk associated with changes in implied volatility.

Volatility-focused products have become more prominent over the past few years, and in a number of different formats and types, including ETFs, exchange-traded notes, exchange-traded options, and exchange-traded futures. Such products offer investors the opportunity to manage their volatility risks associated with an underlying asset class. Currently, most of the products focus on underlying equity indexes or equity-based portfolios. The Exchange proposes to introduce a cash-settled options contract on a new volatility index, which focuses on equity exposure using options on the SPDR® S&P® ETF (SPY). SPY is the largest and most liquid ETF in the United Sates, and the most actively traded equity option product. The Exchange believes that because the Index is derived from published SPY options prices, and given the immense liquidity found in the individual portfolio components of SPY, the concern that the Index will be subject to market manipulation is greatly reduced. Therefore, the Exchange believes that the proposed rule change to list options on the Index is appropriate.

The Exchange further notes that ISE Rules that apply to the trading of other index options currently traded on the Exchange would also apply to the trading of options on the Index. Additionally, the trading of options on the Index would be subject to, among others, Exchange Rules governing margin requirements and trading halt procedures.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in options on the Index. The Exchange also represents that it has the necessary systems capacity to support the new options series. And as stated in the filing, the Exchange has rules in place designed to protect public customer trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of a novel index option product that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[17] Pursuant to ISE Rule 602, Representatives of a Member may solicit or accept customer orders for options on the Index.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2013–42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2013–42. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2013–42 and should be submitted on or before August 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–18592 Filed 8–1–13; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a revision and an extension of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*.

(SSA), Social Security Administration, DCRDP, Attn: Reports Clearance Director, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*.

SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than September 3, 2013. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov*.

1. *Waiver of Your Right to Personal Appearance before an Administrative Law Judge—20 CFR 404.948(b)(l)(i) and 416.1448(b)(l)(i)—0960–0284.* Applicants for Social Security, Old Age, Survivors and Disability Insurance (OASDI) benefits and Supplemental Security Income (SSI) payments have the statutory right to appear in person (or through a representative) and present evidence about their claims at a hearing before an administrative law judge (ALJ). If claimants wish to waive this right to appear before an ALJ, they must do so in writing. Form HA–4608 serves as a written waiver for the claimant's right to a personal appearance before an ALJ. The ALJ uses the information we collect on Form HA–4608 to continue processing the case, and makes the completed form a part of the documentary evidence of record by placing it in the official record of the proceedings as an exhibit. Respondents are applicants or claimants for OASDI and SSI, or their representatives, who request to waive their right to appear in person before an ALJ.

Type of Request: Revision of an approved-OMB information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–4608	12,000	1	2	400

2. *Letter to Custodian of Birth Records/Letter to Custodian of School Records—20 CFR 404.704, 404.716, 416.802, and 422.107—0960–0693.* When individuals need help in obtaining evidence of their age in connection with Social Security number (SSN) card applications and claims for benefits, SSA can prepare the SSA–L106, Letter to Custodian of School Records, or SSA–L706, Letter to Custodian of Birth Records. SSA uses the SSA–L706 to determine the existence of primary evidence of age of SSN applicants. SSA uses both letters to verify with the issuing entity, when necessary, the authenticity of the record submitted by the SSN applicant or claimant. The respondents are schools, State and local bureaus of vital statistics, and religious entities.

This is a correction notice. SSA published this information collection as a revision on May 23, 2013 at 78 FR 30952. Since we are not revising the information collection, this is now an

[20] 17 CFR 200.30–3(a)(12).

extension of an OMB-approved information collection.

Type of Request: Extension of an OMB-approved information collection.

Type of respondents	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
Private Sector	1,800	1	10	300
State/Local/Tribal Government	1,800	1	10	300
Totals	3,600			600

Type of respondents	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
Private Sector	1,800	1	10	300
State/Local/Tribal Government	1,800	1	10	300
Totals	3,600			600

Dated: July 30, 2013.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2013–18635 Filed 8–1–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 8403]

Suggestions for Environmental Cooperation Pursuant to the United States-Colombia Environmental Cooperation Agreement

AGENCY: Department of State.

ACTION: Notice of preparation of and request for comments regarding the first United States—Colombia Environmental Cooperation Work Program.

SUMMARY: The Department invites the public, including NGOs, educational institutions, private sector enterprises and other interested persons, to submit written comments or suggestions regarding items for inclusion in the first Work Program for implementing the United States—Colombia Environmental Cooperation Agreement, which entered into force on June 28, 2013. We encourage submitters to refer to: (1) The U.S.—Colombia Environmental Cooperation Agreement; (2) Chapter 18 (Environment) of the U.S.—Colombia Trade Promotion Agreement; and (3) the Environmental Review of the U.S.—Colombia Trade Promotion Agreement. These documents are available at: *http://www.state.gov/e/oes/eqt/trade/c51527.htm.*

DATES: To be assured of timely consideration, all written comments or suggestions are requested no later than August 16, 2013.

ADDRESSES: Written comments or suggestions should be emailed to (*MartirTorresMC@state.gov*) or faxed ((202) 647–5947) to Maina Martir-Torres, Office of Environmental Quality and Transboundary Issues, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, with the subject line ''U.S.-Colombia Environmental Cooperation.'' If you have access to the Internet, you can view and comment on this notice by going to: *http://www.regulations.gov/#!home* and searching on docket number: DOS–2013–0013

FOR FURTHER INFORMATION, CONTACT: Maina Martir-Torres, telephone (202) 647–4750.

SUPPLEMENTARY INFORMATION:

U.S.-Colombia Environmental Cooperation Agreement

The United States—Colombia Environmental Cooperation Agreement (ECA) entered into force on June 28, 2013. The United States and Colombia negotiated the ECA in parallel with the U.S.—Colombia Trade Promotion Agreement. The ECA establishes a framework to promote cooperation on environmental protection, sustainable management of natural resources, conservation and protection of biodiversity, and strengthening of environmental law enforcement. Article III of the ECA establishes an Environmental Cooperation Commission (ECC), which is responsible for developing work programs that reflect the parties' priorities for cooperative environmental activities.

We are requesting suggestions for cooperative environmental activities to consider for inclusion in the first Work Program. For additional information, please visit: *http://www.state.gov/e/oes/eqt/trade/index.htm.Disclaimer:* This Public Notice is a request for comments and suggestions, and is not a request for applications. No granting of money is directly associated with this request for suggestions for the Work Program. There is no expectation of resources or funding associated with any comments or suggestions for the Work Program or the Plan of Action.

Dated: July 23, 2013.

Deborah E. Klepp,

Director, Office of Environmental Quality and Transboundary Issues, Department of State.

[FR Doc. 2013–18666 Filed 8–1–13; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 8404]

Waiver of Restriction on Assistance to the Central Government of Suriname

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L.112–74) (''the Act''), as carried forward by the Further Continuing Appropriations Act, 2013 (Div. F, Pub. L. 113–6), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act and similar provisions of law in prior year Acts with respect to Suriname and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register.**

Dated: July 19, 2013.

William J. Burns,

Deputy Secretary.

[FR Doc. 2013–18670 Filed 8–1–13; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2013–0265]

Proposed Policy for Discontinuance of Certain Instrument Approach Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy and request for comment.

SUMMARY: As, new technology facilitates the introduction of area navigation (RNAV) instrument approach procedures over the past decade, the number of procedures available in the National Airspace System has nearly doubled. The complexity and cost to the Federal Aviation Administration (FAA) of maintaining the existing ground based navigational infrastructure while expanding the new RNAV capability is not sustainable. The FAA is considering the cancellation of certain Non-directional Beacon (NDB) and Very High Frequency (VHF) Omnidirectional Radio Range (VOR) instrument approach procedures (IAP) at airports that have multiple instrument approach procedures. The FAA proposes specific criteria to guide the identification and selection of appropriate NDB and VOR instrument approach procedures that can be considered for cancellation. The VOR IAPs associated with this cancellation initiative would be selected from the criteria outlined below. This Notice is not a part of the FAA's VOR minimum operating network (MON) initiative.

DATES: Comments must be received on or before October 1, 2013.

ADDRESSES: Send comments identified by docket number 2013–0265 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.
- *Privacy:* The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*
- *Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. This proposal is subject to change after review of public comments.

FOR FURTHER INFORMATION CONTACT: For questions concerning this action, contact Mr. Larry Strout, Aeronautical Navigational Products, Terminal Products Group, Central Products Team Manager, Air Traffic Organization, AJV–353, Federal Aviation Administration, 6500 S. MacArthur BLVD, Oklahoma City, OK 73169; telephone (405) 954–5070, email AMC–ATO–IFP-Cancellations@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority

Title 49 of the United States Code, section 40103, vests the Administrator with broad authority to regulate the safe and efficient use of the navigable airspace. The Administrator is authorized to issue rules and regulations to govern the flight, navigation, protection, and identification of aircraft for the protection of persons and property on the ground, and for the efficient use of the navigable airspace (49 U.S.C. 40103(b)). The Administrator also is authorized under § 44701(a)(5) to promote safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

Background

The FAA is continuing to expand the availability and capability of area navigation (RNAV) to improve safety and efficiency within the National Airspace System (NAS). A major enhancement is the introduction of Wide Area Augmentation System (WAAS) capable RNAV instrument approach procedures that provide for near-precision vertical guidance.

As a result of new RNAV instrument approach procedures, the number of instrument approach procedures available to the public has nearly doubled over the past decade and will continue to grow with the public's demand for new WAAS procedures. The complexity and cost of maintaining existing ground-based navigational infrastructure while expanding new RNAV capability is exceeding the FAA's current staffing and budget allocations and projections over the next five years. To meet the public's demand for WAAS capable RNAV procedures, the FAA must manage the growth in the number of instrument approach procedures and finds that certain redundant ground-based procedures can be eliminated without affecting safety or access to airports.

To help identify viable strategies for cancellation of ground-based procedures, the FAA awarded a grant to the Flight Safety Foundation. In conducting its research, the Flight Safety Foundation held meetings with FAA and Department of Defense (DOD) personnel and key industry interest groups. Outreach conducted by the Foundation identified that most NDB procedures are no longer desired, except in support of certain DOD operations and flight schools. The Flight Safety Foundation also found user support for cancelling some VOR procedures when multiple IAPs are available. Results of the Flight Safety Foundation study were published in the report titled ''A Recommended Process: Safely Reducing Redundant or Underutilized Instrument Approach Procedures.'' The report is available for review at: *https://www.faa.gov/air_traffic/flight_info/aeronav/procedures/reports/media/FAA_Grant_Flight_Safety_Foundation_Inc-2010G023.pdf.*

By this notice, the FAA seeks comments on proposed criteria that would facilitate the FAA's determination of which procedures can be considered for cancellation. After reviewing the comments submitted to this notice, the FAA will use the criteria for selection of potential NDB and VOR procedures for cancellation. Once the criteria are established and the FAA

considers IAPs for cancellation, the FAA will publish a list of potential IAPs in the **Federal Register** for notice and comment. Submitted comments will be reviewed and addressed in the final list of subject IAPs published in the **Federal Register**. The criteria proposed in this notice does not affect any NAS navigational back-up plans and is not a part of the FAA's VOR minimum operating network (MON) initiative.

Proposed Policy

The NDB and VOR IAPs recommended for cancellation would be selected at airports using the following criteria. It must be noted that all airports that have existing RNAV and ground-based IAPs would maintain at least one RNAV and one ground-based IAP.

Airports that would be considered for NDB or VOR IAP cancellation:

— All airports with an NDB IAP.
—All airports with a VOR/DME RNAV IAP, unless it is the only IAP at the airport.
—All airports with two or more ground-based IAPs and an RNAV IAP.
—All airports with multiple, redundant ground-based IAPs (e.g., three VOR procedures).

Additional consideration would be given to the following factors in determining the list of potential candidates for cancellation:

—Prevailing wind runways.
—Prevailing runway alignment during adverse weather operations.
—If an airport has a published ILS IAP and additional ground-based IAPs, cancel the procedure to the same runway as the ILS.
—For airports with multiple VOR and NDB IAP's, retain the IAP with the lowest minimums (if minimums are within 20 feet of each other retain the procedure that allows optimum use by all customers (i.e. VOR and VOR/DME retain VOR because there are no equipage limitations).

Airports that would not be considered for NDB or VOR IAP cancellations:

—Airport with only RNAV/RNPs IAPs published.
—Airport with only one ground-based procedure.
—Airports will not be considered if cancellation would result in removing all IAPs from the airport.

Lastly, the FAA is not considering the following types of procedures for cancellation:

PBN Procedures (RNAV or RNP).
ILS procedures.
Localizer procedures.
TACAN procedures.
Standard Instrument Arrivals (STARs).
Standard Instrument Departures (SIDs).

Comments Invited

The FAA invites interested parties to submit written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments or, if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD–ROM, mark the outside of the disk or CD–ROM, and identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

Issued in Washington, DC, on July 19, 2013.

Abigail Smith,

Aeronautical Navigation Products, Director.

[FR Doc. 2013–17940 Filed 8–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Final Environmental Impact Statement (Final EIS)

AGENCY: Federal Aviation Administration.

ACTION: Notice of availability of Final EIS.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and Council on Environmental Quality regulations (40 CFR Part 1500–1508), the Federal Aviation Administration (FAA) is issuing this notice to advise the public that a Final EIS for proposed improvements to Runway Safety Areas at the Kodiak Airport has been prepared and is available for public review. Included in the Final EIS are a Subsistence Evaluation consistent with Section 810 of the Alaska National Interest Lands Conservation Act and a final evaluation pursuant to Section 4(f) of the Department of Transportation Act of 1966 (recodified as 49 U.S.C. 303(c)).

ADDRESSES: Copies of the Final EIS may be viewed online or during regular business hours at the following locations:

1. Online at *www.kodiakairporteis.com*.
2. Federal Aviation Administration, Airports Division, 222 W. 7th Avenue #14, Anchorage, AK 99513–7587. (907) 271–5453.
3. Holmes Johnson Memorial Library, 319 Lower Mill Bay Road, Kodiak, AK 99615. (907) 486–8680.
4. Alaska Department of Transportation and Public Facilities, 4111 Aviation Avenue, Anchorage, AK 99502.

FOR FURTHER INFORMATION CONTACT: Leslie Grey, Environmental Specialist, Federal Aviation Administration, Alaskan Region, Airports Division, address 222 W. 7th Avenue Box #14, Anchorage, AK 99513. Ms. Grey may be contacted during business hours at (907) 271–5453 (telephone) and (907) 271–2851 (fax), or by email at *Leslie.Grey@faa.gov*.

SUPPLEMENTARY INFORMATION: The Final EIS discusses proposed improvements to the Runway Safety Areas for Runway 07/25 and Runway 18/36, which have the potential to result in significant adverse environmental impacts. The FAA has identified the following preferred alternatives to meet the need for improved Runway Safety Areas:

• Improvements to the Runway Safety Area for Runway 07/25: Alternative 2,

involving placement of fill off Runway end 25 and installation of an Engineered Material Arresting System (EMAS) bed on the newly constructed landmass.

• Improvements to the Runway Safety Area for Runway 18/36: Alternative 7, involving a landmass extension to the south beyond Runway end 36, shifting the runway to the south, and placing an EMAS bed to the north beyond Runway end 18.

Authority: 42 U.S.C. 4321 *et seq.,* 40 CFR Part 1500–1508

Issued in Anchorage, Alaska, on July 23, 2013.

Byron K. Huffman,

Manager, Airports Division, Alaskan Region.

[FR Doc. 2013–18537 Filed 8–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development Advisory Committee

Pursuant to section 10(A) (2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee.

AGENCY: Federal Aviation Administration.

ACTION: Notice of meeting.

Name: Research, Engineering & Development Advisory Committee.

Time and Date: September 18—8:30 a.m. to 4:00 p.m.

Place: Federal Aviation Administration, 800 Independence Avenue SW.—Round Room (10th Floor), Washington, DC 20591.

Purpose: The meeting agenda will include receiving from the Committee guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, human factors and environment and energy. Attendance is open to the interested public but seating is limited. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman at (202) 267–8937 or *gloria.dunderman@faa.gov.* Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on July 25, 2013.

Gloria Dunderman,

Management & Program Analyst.

[FR Doc. 2013–18704 Filed 8–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0108; Notice 2]

Bridgestone Americas Tire Operations, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of petition.

SUMMARY: Bridgestone Americas Tire Operations, LLC (Bridgestone),[1] has determined that certain Bridgestone brand replacement tires manufactured between June 19, 2011 and March 17, 2012, do not fully comply with paragraph § 5.5(f) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* Bridgestone has filed an appropriate report dated July 19, 2012, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, Bridgestone has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on December 3, 2012 in the **Federal Register** (77 FR 71679). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2012–0108.''

CONTACT INFORMATION: For further information on this decision contact Mr. Abraham Diaz, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5310, facsimile (202) 366–7002.

Equipment Involved: Affected are approximately 1,102 Firestone Firehawk Wide Oval AS size 245/40R19 and 245/35R20 brand tires manufactured between June 19, 2011, and March 17, 2012. Only 97 of the affected tires are no longer under the control of the petitioner. Therefore, only those 97 tires are the subject of this petition.

Rule Text: Section S5.5 of FMVSS No. 139 specifically states:

S5.5 Tire markings. Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one sidewall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width that falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inches . . .

(f) The actual number of plies in the sidewall, and the actual number of plies in the tread area, if different . . .

Summary of Bridgestone's Analyses: Bridgestone explains that the noncompliance is that due to a mold labeling error the sidewall marking on the reference side of the tires incorrectly describes the actual number of plies in the tread area of the tires and therefore does not comply with paragraph § 5.5(f) of FMVSS No. 139. Specifically, the tires in question were inadvertently manufactured with ''TREAD 1 POLYESTER 2 STEEL 1 NYLON.'' The labeling should have been ''TREAD 1 POLYESTER 2 STEEL 2 NYLON.''

Bridgestone stated its belief that the subject noncompliance is inconsequential to motor vehicle safety because the subject tires meet or exceed all performance requirements as required in part by FMVSS No. 139 and that the noncompliant labeling has no impact on the operational performance or safety of vehicles on which these tires are mounted.

Bridgestone points out that NHTSA has previously granted similar petitions for non-compliances in sidewall markings.

Bridgestone has also informed NHTSA that it has corrected future production and will re-label the 1,005 contained tires to reflect correct construction.

In summation, Bridgestone believes that the described noncompliance of the subject tires is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

[1] Bridgestone Americas Tire Operations, LLC is a manufacturer of replacement equipment and is registered under the laws of the state of Delaware.

NHTSA Decision: The agency agrees with Bridgestone that the noncompliance is inconsequential to motor vehicle safety. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. The safety of people working in the tire retread, repair, and recycling industries must also be considered.

Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as the load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings to assess performance capabilities of various tires. In the agency's judgment, the incorrect labeling of the tire construction information in this case will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the number of plies in a tire.

The agency also believes the noncompliance will have no measurable effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries. In this case, since the tires are marked correctly with respect to steel ply content, this potential safety concern does not exist.

In consideration of the foregoing, NHTSA has decided that Bridgestone has met its burden of persuasion that the FMVSS No. 139 noncompliance and is inconsequential to motor vehicle safety. Accordingly, Bridgestone's petition is hereby granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to approximately 97 tires that Bridgestone no longer controlled at the time that it determined that a noncompliance existed in the subject tires. However, the granting of this petition does not relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Bridgestone notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8)

Issued on: July 25, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–18576 Filed 8–1–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0109; Notice 2]

Cooper Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of petition.

SUMMARY: Cooper Tire & Rubber Company (Cooper) [1] has determined that certain Cooper brand replacement tires manufactured between May 20, 2012 and June 16, 2012, do not fully comply with paragraph S5.5 of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* Cooper has filed an appropriate report dated July 5, 2012, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, Cooper has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on February 11, 2013 in the **Federal Register** (78 FR 9775.) No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2012–0109.''

CONTACT INFORMATION: For further information on this decision contact Mr. Abraham Diaz, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5310, facsimile (202) 366–7002.

Equipment Involved: Affected are approximately 1,080 size P225/70R14 El Dorado Legend GT brand standard load replacement tires manufactured in Mexico by Cooper's affiliate, Corporación de Occidente S.A. de C.V., between May 20, 2012, and June 16, 2012.

Rule Text: Section S5.5 of FMVSS No. 139 specifically states:

> S5.5 Tire markings. Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one sidewall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inches.
>
> (e) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire;
>
> (f) The actual number of plies in the sidewall, and the actual number of plies in the tread area, if different; . . .

Summary of Cooper's Analyses: Cooper explains that the noncompliance is that due to a mold labeling error the sidewall marking on the tires incorrectly describes the actual number of plies in the tread area of the tires as required by paragraph S5.5(f).

Specifically, the tires in question were inadvertently manufactured with ''TREAD 2 PLY STEEL + 2 PLY POLYESTER; SIDEWALL 2 PLY POLYESTER.'' The labeling should have been ''TREAD 1 PLY NYLON + 2 PLY STEEL + 2 PLY POLYESTER; SIDEWALL 2 PLY POLYESTER.''

Cooper believes that while the noncompliant tires are mislabeled, the subject tires in fact have more tread plies than indicated and meet or exceed all performance requirements as required in part by FMVSS No. 139.

In addition, Cooper states that it has corrected the problem that caused the

[1] Cooper Tire & Rubber Company is a manufacturer of replacement equipment and is registered under the laws of the state of Delaware.

noncompliance so that it will not reoccur in future production.

In summation, Cooper believes that the described noncompliance of the subject tires is inconsequential to motor vehicle safety, and that its petition, to exempt Cooper from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA Decision: The agency agrees with Cooper that the noncompliance is inconsequential to motor vehicle safety. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. The safety of people working in the tire retread, repair, and recycling industries must also be considered.

Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as the load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings to assess performance capabilities of various tires. In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the number of plies in a tire.

The agency also believes the noncompliance will have no measurable effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries. In this case, since the tires are marked correctly with respect to steel ply content, this potential safety concern does not exist.

In consideration of the foregoing, NHTSA has decided that Cooper has met its burden of persuasion that the FMVSS No. 139 noncompliance in the tires identified in Cooper's Noncompliance Information Report is inconsequential to motor vehicle safety. Accordingly, Cooper's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to approximately 1,080 tires that Cooper no longer controlled at the time that it determined that a noncompliance existed in the subject tires. However, the granting of this petition does not relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Cooper notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Issued on: July 25, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–18577 Filed 8–1–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35742]

Clarkdale Arizona Central Railroad, L.C.—Trackage Rights Exemption—Drake Cement, LLC

Drake Cement, LLC (Drake), pursuant to a written Trackage Rights Agreement (Agreement) dated May 11, 2012, has agreed to grant overhead trackage rights to Clarkdale Arizona Central Railroad, L.C. (CACR) over Drake's Track Nos. 3907, 3924, 3921 and 3904 located between milepost 0 + 15 feet and milepost 0 + 3000 feet, in Drake, Ariz., a distance of 2,985 feet in length.[1] The Agreement also grants CACR the right to operate over Drake's Track Nos. 3922 and 3923 to provide switching operations for Drake. Both Drake and CACR are Class III rail carriers.

The transaction is scheduled to be consummated on or after August 16, 2013, the effective date of the exemption (30 days after the exemption was filed).

Although Drake owns the above tracks, CACR states that the BNSF Railway Company (BNSF) retains an operating easement over the 2,985 feet of trackage. The purpose of the transaction is to permit CACR to interchange traffic with BNSF and to provide switching operations for Drake.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by August 9, 2013 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35742, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Ball Janik LLP, Suite 225, 655 Fifteenth Street NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV*.''

Decided: July 30, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013–18679 Filed 8–1–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 943, 943–PR, 943–A, and 943A–PR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed

[1] A redacted trackage rights agreement between Drake and CACR was filed with the notice of exemption. An unredacted version was filed under seal along with a motion for protective order, which will be addressed in a separate decision.

and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 943, Employer's Annual Tax Return for Agricultural Employees, 943–PR, Planilla Para La Declarcion Anual De La Contribucion Federal Del Patrono De Empleados Agricolas, 943–A, Agricultural Employer's Record of Federal Tax Liability, and 943A–PR, Registro De La Obligacion Contributiva Del Patrono Agricola.

DATES: Written comments should be received on or before October 1, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employer's Annual Tax Return for Agricultural Employees (Form 943), Planilla Para La Declarcion Anual De La Contribucion Federal Del Patrono De Empleados Agricolas (Form 943–PR), Agricultural Employer's Record of Federal Tax Liability (Form 943–A), and Registro De La Obligacion Contributiva Del Patrono Agricola (Form 943A–PR).

OMB Number: 1545–0035.

Form Numbers: 943, 943–PR, 943–A, and 943A–PR.

Abstract: Agricultural employers must prepare and file Form 943 and Form 943–PR (Puerto Rico only) to report and pay FICA taxes and income tax voluntarily withheld (Form 943 only). Agricultural employees may attach Forms 943–A and 943A–PR to Forms 943 and 943–PR to show their tax liabilities for semiweekly periods. The information is used to verify that the correct tax has been paid.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 684,444.

Estimated Time per Respondent: 10 hr., 29 min.

Estimated Total Annual Burden Hours: 8,972,974.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 29, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–18729 Filed 8–1–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5330

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5330, Return of Excise Taxes Related to Employee Benefit Plans.

DATES: Written comments should be received on or before October 1, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald J. Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Return of Excise Taxes Related to Employee Benefit Plans.

OMB Number: 1545–0575.

Form Number: Form 5330.

Abstract: This form used to report and pay the excise Tax related to employee benefit plans imposed by sections 4971, 4972, 4973(a)(2), 4975, 4976, 4977, 4978, 4979, 4979A, and 4980 of the Internal Revenue Code.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 8,403.

Estimated Time Per Respondent: 64 hours 16 minutes.

Estimated Total Annual Burden Hours: 540,145.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 24, 2013.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2013–18739 Filed 8–1–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–NA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–NA, United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States.

DATES: Written comments should be received on or before October 1, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States.

OMB Number: 1545–0531.

Form Number: 706–NA.

Abstract: Form 706–NA is used to compute estate and generation-skipping transfer tax liability for nonresident alien decedents in accordance with section 6018 of the Internal Revenue Code. IRS uses the information on the form to determine the correct amount of tax and credits.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10.

Estimated Time per Respondent: 4 hours, 29 minutes.

Estimated Total Annual Burden Hours: 45.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 29, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–18720 Filed 8–1–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8453–B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8453–B, U.S Electing Large Partnership Declaration for an IRS *e-file* Return.

DATES: Written comments should be received on or before October 1, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* U.S Electing Large Partnership Declaration for an IRS *e-file* Return.

OMB Number: 1545–2058.

Form Number: Form 8453–B.

Abstract: Form 8453–B is used to authenticate an electronic Form 1065–B, U.S. Return of Income for Electing Large Partnerships, to authorize the ERO, if any, to transmit via a third-party transmitter, and to authorize the intermediate service provider (ISP) to transmit via a third-party transmitter if you are filing online (not using an ERO).

Current Actions: There are no changes to the burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 60.

Estimated Time Per Respondent: 2 hours, 23 minutes.

Estimated Total Annual Burden Hours: 144.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 29, 2013.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2013–18737 Filed 8–1–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning procedure for monitoring compliance with low-income housing credit requirements; rules to carry out the purposes of section 42 and for correcting administrative errors and omissions; and compliance monitoring and miscellaneous issues relating to the low-income housing credit.

DATES: Written comments should be received on or before October 1, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: PS–78–91, Procedure for Monitoring Compliance With Low-Income Housing Credit Requirements; PS–50–92, Rules To Carry Out the Purposes of Section 42 and for Correcting Administrative Errors and Omissions; and REG–114664–97, Compliance Monitoring and Miscellaneous Issues Relating to the Low-Income Housing Credit.

OMB Number: 1545–1357.

Regulation Project Numbers: PS–78–91; PS–50–92; and REG–114664–97.

Abstract: PS–78–91 This regulation requires state allocation plans to provide a procedure for state and local housing credit agencies to monitor for compliance with the requirements of Code section 42 and report any noncompliance to the IRS. *PS–50–92* This regulation concerns the Secretary of the Treasury's authority to provide guidance under Code section 42 and allows state and local housing credit agencies to correct administrative errors and omissions made in connection with allocations of low-income housing credit dollar amounts and recordkeeping within a reasonable period after their discovery. *REG–114664–97* This regulation amends the procedures for state and local housing credit agencies' compliance monitoring and the rules for state and local housing credit agencies' correction of administrative errors or omissions.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individual or households, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 22,141.

Estimated Time per Respondent: 4 hours, 45 minutes.

Estimated Total Annual Burden Hours: 104,899.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 29, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–18721 Filed 8–1–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning employer comparable contributions to health savings accounts under section 4980G.

DATES: Written comments should be received on or before October 1, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employer Comparable Contributions to Health Savings Accounts Under Section 4980G.

OMB Number: 1545–2090. *Regulation Project Number:* REG–143797–06.

Abstract: This document contains final regulations providing guidance on employer comparable contributions to Health Savings Accounts (HSAs) under section 4980G in instances where an employee has not established an HAS by December 31st and in instances where an employer accelerates contributions for the calendar year for employees who have incurred qualified medical expenses. These final regulations affect employers that contribute to employees' HSAs and their employees.

Current Actions: There are no changes being made to this regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000,000.

Estimated Time per Respondent: 1 Hour 15 minutes.

Estimated Total Annual Burden Hours: 1,250,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 30, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–18742 Filed 8–1–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning tax exempt entity leasing.

DATES: Written comments should be received on or before October 1, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tax-Exempt Entity Leasing.

OMB Number: 1545–0923. *Regulation Project Number:* REG–209274–85.

Abstract: These regulations provide guidance to persons executing lease agreements involving tax-exempt entities under 168(h) of the Internal Revenue Code. The regulations are necessary to implement Congressionally enacted legislation and elections for certain previously tax-exempt organizations and certain tax-exempt controlled entities.

Current Actions: There are no changes to these existing regulations.

Type of Review: Extension of OMB approval.

Affected Public: Not-for-profit institutions and state, local or tribal governments.

Estimated Number of Respondents: 4,000.

Estimated Time Per Respondent: 30 minutes.

Estimate Total Annual Burden Hours: 2,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 29, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–18727 Filed 8–1–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 941, 941–PR, 941–SS, 941–X, 941–X(PR), Schedule B (Form 941), Schedule R (Form 941)and Schedule B (Form 941–PR)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 941 (Employer's Quarterly Federal Tax Return), 941–PR, 941–SS (Employer's Quarterly Federal Tax Return-American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands), 941–X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund, 941–X(PR), Schedule R, Allocation Schedule for Aggregated Form 941 Filers, Schedule B (Form 941) (Employer's Record of Federal Tax Liability), and Schedule B (Form 941–PR).

DATES: Written comments should be received on or before October 1, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employer's Quarterly Federal Tax Return.

OMB Number: 1545–0029.

Form Numbers: 941, 941–PR, 941–SS, 941–X, 941–X(PR), Schedule R (Form 941), Schedule B (Form 941), and Schedule B (Form 941–PR).

Abstract: Form 941 is used by employers to report payments made to employees subject to income and social security/Medicare taxes and the amounts of these taxes. Form 941–PR is used by employers in Puerto Rico to report social security and Medicare taxes only. Form 941–SS is used by employers in the U.S. possessions to report social security and Medicare taxes only. Schedule B is used by employers to record their employment tax liability.

Current Actions: There are no changes being made to the burden previously approved by OMB, at this point in time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals, individuals or households, not-for-profit institutions, Federal government, and state, local or tribal governments.

Estimated Number of Responses: 37,810,463.

Estimated Time per Respondent: 10 hours, 16 minutes.

Estimated Total Annual Burden Hours: 388,256,964.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 8, 2013.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2013–18733 Filed 8–1–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8809

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8809, Application for Extension of Time To File Information Returns.

DATES: Written comments should be received on or before October 1, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Extension of Time To File Information Returns.

OMB Number: 1545–1081.

Form Number: Form 8809.

Abstract: Form 8809 is used to request an extension of time to file Forms W–

2, W–2G, 1042–S, 1098, 1099, 5498, or 8027. The IRS reviews the information contained on the form to determine whether an extension should be granted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, farms, and Federal, State, local or tribal governments.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondents: Three (4) hours, 44 minutes.

Estimated Total Annual Burden Hours: 237,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 25, 2013.

R. Joseph Durbala,

Tax Analyst, IRS PRA Clearance Office.

[FR Doc. 2013–18736 Filed 8–1–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning certain elections under the technical and miscellaneous revenue act of 1988 and the redesignation of certain other temporary elections regulations.

DATES: Written comments should be received on or before October 1, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certain Elections Under the Technical and Miscellaneous Revenue Act of 1988 and the Redesignation of Certain Other Temporary Elections Regulations.

OMB Number: 1545–1112.

Regulation Project Number: IA–96–88.

Abstract: Regulation section 301.9100–8 provides final income, estate and gift, and employment tax regulations relating to elections made under the Technical and Miscellaneous Revenue Act of 1988. This regulation enables taxpayers to take advantage of various benefits provided by the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local, or tribal governments.

Estimated Number of Respondents: 24,305.

Estimated Time Per Respondent: 17 minutes.

Estimated Total Annual Burden Hours: 6,712.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 29, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–18687 Filed 8–1–13; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 78 Friday,
No. 149 August 2, 2013

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Physaria globosa (Short's bladderpod), Helianthus verticillatus (whorled sunflower), and Leavenworthia crassa (fleshy-fruit Gladecress); Endangered and Threatened Wildlife and Plants; Endangered Status for Physaria globosa (Short's bladderpod), Helianthus verticillatus (whorled sunflower), and Leavenworthia crassa (fleshy-fruit gladecress); Proposed Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2013–0086; 4500030114]

RIN 1018–AZ60

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Physaria globosa (Short's bladderpod), Helianthus verticillatus (whorled sunflower), and Leavenworthia crassa (fleshy-fruit gladecress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to designate critical habitat for *Physaria globosa* (Short's bladderpod), *Helianthus verticillatus* (whorled sunflower), and *Leavenworthia crassa* (fleshy-fruit gladecress) under the Endangered Species Act of 1973, as amended (Act). If we finalize this rule as proposed, it would extend the Act's protections to the habitats of *Physaria globosa* (Short's bladderpod), *Helianthus verticillatus* (whorled sunflower), and *Leavenworthia crassa* (fleshy-fruit gladecress) to conserve these habitats under the Act.

DATES: We will accept comments received or postmarked on or before October 1, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by September 16, 2013.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search field, enter Docket No. FWS–R4–ES–2013–0086, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2013–0086; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more information).

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.fws.gov/cookeville,* at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0086, and at the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and/or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mary E. Jennings, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Fish and Wildlife Office, 446 Neal Street, Cookeville, TN 38501; telephone 931–528–6481. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Designations and revisions of critical habitat can only be completed by issuing a rule. Elsewhere in today's **Federal Register**, we propose to list *Physaria globosa* (Short's bladderpod), *Helianthus verticillatus* (whorled sunflower), and *Leavenworthia crassa* (fleshy-fruit gladecress) as endangered species under the Act.

This rule consists of a proposed critical habitat designation for *Physaria globosa* (Short's bladderpod), *Helianthus verticillatus* (whorled sunflower), and *Leavenworthia crassa* (fleshy-fruit gladecress) under the Act.

The basis for our action. Under the Act, to the maximum extent prudent and determinable, we must designate critical habitat for a species concurrently with listing the species as endangered or threatened. These three plant species are proposed for listing as endangered, and therefore we also propose to:

- Designate approximately 373 hectares (ha) (925.5 acres (ac)) of critical habitat for Short's bladderpod in Posey County, Indiana; Clark, Franklin, and Woodford Counties, Kentucky; and Cheatham, Davidson, Dickson, Jackson, Montgomery, Smith, and Trousdale Counties, Tennessee.
- Designate approximately 624 ha (1,542 ac) of critical habitat for whorled sunflower in Cherokee County, Alabama; Floyd County, Georgia; and Madison and McNairy Counties, Tennessee.
- Designate approximately 8.4 ha (20.5 ac) of critical habitat for fleshy-fruit gladecress in Lawrence and Morgan Counties, Alabama.

We will seek peer review. We are seeking comments from independent specialists to ensure that our critical habitat proposal is based on scientifically sound data and analyses. We have invited these peer reviewers to comment on our specific assumptions and conclusions in this critical habitat proposal. Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of Short's bladderpod, whorled sunflower, or fleshy-fruit gladecress habitat;

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on Short's bladderpod, whorled sunflower, fleshy-fruit gladecress, and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, we seek information on any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

All previous Federal actions are described in the proposed rule to list Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress as endangered species under the Act, published elsewhere in today's **Federal Register**.

Background

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for Short's bladderpod, whorled sunflower, and the fleshy-fruit gladecress. For information related to the listing of these species, see the proposed rule to list these species as endangered, published elsewhere in today's **Federal Register**.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographic area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation

limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. Climate change will be a particular challenge for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah and Lovejoy 2005, p. 4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change (IPCC) 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015).

We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking, collection, or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or

(2) Such designation of critical habitat would not be beneficial to the species.

There is currently no imminent threat of take attributed to collection or vandalism for any of these species (see the Factor B analysis in the proposed listing rule, published elsewhere in today's **Federal Register**), and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. Here, the potential benefits of designation include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the three species is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where these species are located. This and other information represent the best scientific data available and have led us to conclude that the designation of critical habitat is determinable for Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management

considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

We derive the specific physical or biological features required for Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress from studies of these species' habitats, ecology, and life history as described below.

Space for Individual and Population Growth and for Normal Behavior

Short's bladderpod. This species occurs in Kentucky and Tennessee on soils and outcrops of calcareous geologic formations along the mainstem or tributaries of the Kentucky and Cumberland Rivers, respectively. The calcareous bedrock formations on which Short's bladderpod primarily is found are limestones of Mississippian, Silurian, or Ordivician age, with siltstone or shale interbedded at some occurrences (Kentucky Geological Survey, *http://www.arcgis.com/home/item.html?id=d32dc6edbf9245cdbac3fd7e255d3974;* Moore *et al.* 1967; Wilson 1972, 1975, 1979; Wilson *et al.* 1972, 1980; Marsh *et al.* 1973; Finlayson *et al.* 1980; Kerrigan and Wilson 2002). Soils where Short's bladderpod occurs in the Kentucky and Cumberland River drainages have formed from weathering of the underlying calcareous bedrock formations, producing shallow or rocky, well-drained soils in which bedrock outcrops are common (USDA 1975, pp. 12–17; USDA 1981, pp. 46–47; USDA 1985, p. 64; USDA 2001, pp. 19–20, 28, 59, 64; USDA 2004a, pp. 22–23, 36–37, 83, 87; USDA 2004b, pp. 21, 75, 82). The species inhabits these outcrops and soils where they occur on steeply sloped bluffs or hillsides, primarily with a south- to west-facing aspect (Shea 1993, p. 16). The combination of calcareous outcrops and shallow soils, steep slopes, and hot and dry conditions present on south- to west-facing slopes regulates the encroachment of herbaceous and woody species that exclude Short's bladderpod from vegetation communities present on more mesic sites. Where these conditions occur near the mainstem and tributaries of the Kentucky River in Kentucky and Cumberland River in Tennessee, they provide space for Short's bladderpod's individual and population growth.

Therefore, based on the above information, we identify steeply sloped hillsides or bluffs with calcareous outcrops or shallow or rocky, well-drained soils, typically on south- to west-facing aspects as an essential physical or biological feature for this species.

Whorled sunflower. This species occurs in remnant prairie habitats found in uplands and swales of headwater streams in the Coosa River watershed in Georgia and Alabama and in the East Fork Forked Deer and Tuscumbia Rivers' watersheds in Tennessee. The soil types are silt loams, silty clay loams, and fine sandy loams at the sites where whorled sunflower occurs. These soils share the characteristics of being strongly to extremely acidic and having low to moderate natural fertility and low to medium organic matter content (USDA 1997, pp. 73–76; USDA 1978a, pp. 24–54; USDA 1978b, p. 20; USDA 1978c, p. 44). The silt loams occupy various land forms ranging from broad upland ridges to low stream terraces. These soils formed from weathered limestone or shale (USDA 1978a, pp. 24–54) or in alluvium (clay, silt, sand, gravel, or similar material deposited by running water) derived from loess (predominantly silt-sized sediment, which is formed by the accumulation of wind-blown dust) and are moderately well-drained to well-drained. The silty clay loams formed in alluvium or weathered limestone on floodplains, stream terraces, or upland depressions and are poorly drained. The fine sandy loams are on floodplains and are occasionally flooded during winter and early spring. Where these physical features occur within the headwaters of the Coosa River in Alabama and Georgia and the East Fork Forked Deer and Tuscumbia Rivers in Tennessee, they provide space for the whorled sunflower's individual and population growth.

Therefore, based on the information above, we identify silt loam, silty clay loam, or fine sandy loam soils on land forms including broad uplands, depressions, stream terraces, and floodplains as an essential physical or biological feature for this species.

Fleshy-fruit gladecress. This species is endemic to glade communities associated with limestone outcrops in Lawrence and Morgan Counties, Alabama (Rollins 1963). The terms glade and cedar glades refer to shallow-soiled, open areas that are dominated by herbaceous plants and characterized by exposed sheets of limestone or gravel, with *Juniperus virginiana* (eastern red cedar) frequently occurring in the deeper soils along their edges (Hilton 1997, p. 1; Baskin *et al.* 1986, p. 138; Baskin and Baskin 1985, p. 1). Much of the cedar glade habitat in northern Alabama is in a degraded condition, and populations of fleshy-fruit gladecress, in many cases, persist in glade-like remnants exhibiting various degrees of disturbance including pastures, roadside rights-of-way, and cultivated or plowed fields (Hilton 1997, p. 5). The limestone outcrops, gravel, and shallow soils present in cedar glades and glade-like remnants provide space for individual and population growth of fleshy-fruit gladecress by regulating the encroachment of herbaceous and woody vegetation that would exclude fleshy-fruit gladecress from plant communities found on deeper soils.

Therefore, based on the information above, we identify shallow-soiled, open areas with exposed limestone bedrock or gravel that are dominated by herbaceous plants as an essential physical or biological feature for this species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Short's bladderpod. Within the physical settings described above and the atypical physical setting where the species occurs in Indiana, the most vigorous (Shea 1992, p. 24) and stable (TDEC 20098, p. 1) Short's bladderpod occurrences are found in patches within forested sites where the canopy has remained relatively open over time. Overstory shading has been implicated as a factor contributing to the disappearance of Short's bladderpod from four historically occupied sites and has been identified as a limiting factor at nearly one-fifth of remaining extant occurrences. Competition or shading from invasive, nonnative, herbaceous and shrub species is a documented threat to one-third of the extant Short's bladderpod occurrences. Therefore, based on the information above, we identify forest communities with low levels of canopy closure or openings in the canopy, in which invasive, nonnative plants are absent or are present at sufficiently low levels of abundance that would not inhibit growth or reproduction of Short's bladderpod plants, to be an essential physical or biological feature for this species.

Whorled sunflower. This species is found in moist, prairie-like remnants, which in a more natural condition exist as openings in woodlands and along

adjacent creeks. Today, these conditions are most often found in small remnant patches or old field habitats adjacent to roadsides, railroad rights-of-way, and streams bordered by agricultural lands. Whorled sunflower grows most vigorously where there is little to no forest canopy cover, plants receive full sunlight for most of the day (Schotz 2011, p. 5) and herbaceous species that are characteristic of moist-site prairie vegetation are found.

Dominant grasses include *Schizachyrium scoparium* (little bluestem), *Sorghastrum nutans* (Indian grass), *Andropogon gerardii* (big bluestem), and *Panicum virgatum* (switch grass). Other common herbaceous associates include *Bidens bipinnata* (Spanish needles), *Carex cherokeensis* (Cherokee sedge), *Hypericum sphaerocarpum* (roundseed St. Johnswort), *Helianthus angustifolius* (swamp sunflower), *Helenium autumnale* (common sneezeweed), *Lobelia cardinalis* (cardinal flower), *Pycnanthemum virginianum* (Virginia mountainmint), *Physostegia virginiana* (obedient plant), *Saccharum giganteum* (sugarcane plumegrass), *Silphium terebinthinaceum* (prairie rosinweed), *Sporobolus heterolepis* (prairie dropseed), *Symphyotrichum novae-angliae* (New England aster), (Tennessee Division of Natural Areas 2008, p. 5; Matthews et al. 2002, p. 23; Schotz 2001, p. 3). Encroachment by woody vegetation is a threat to whorled sunflower populations when left unmanaged in old fields, transportation rights-of-way, and borders of agricultural field, as well as in densely shaded silvicultural plantations or forested sites. To prevent excessive shading or competition, these sites should be subjected to periodic disturbance or management to reduce or minimize encroachment of woody vegetation where a forest canopy is not present, or to provide low levels of canopy and midstory closure where they occur in woodlands.

Therefore, based on the information above, we identify sites in old fields, woodlands, and along streams, which receive full or partial sunlight for most of the day and where vegetation characteristics of moist prairie communities is present, to be an essential physical or biological feature for this species.

Fleshy-fruit gladecress. In Morgan, Lawrence, Franklin and Colbert Counties in northwestern Alabama, glades occur in association with outcrops of Bangor Limestone, typically as level areas with exposed sheets of limestone or limestone gravel interspersed with fingers of cedar-hardwood vegetation. The Bangor Limestone is often near the soil surface, and can be seen in rocky cultivated fields and as small outcroppings at the base of low-lying forested hills (Hilton 1997).

All species within the small genus *Leavenworthia* are adapted to the unique physical characteristics of glade habitats, perhaps the most important of these being a combination of shallow soil depth and the resulting tendency to maintain temporary high moisture content at or very near the surface (Rollins 1963, pp. 4–6). Typically, only a few centimeters of soil overlie the bedrock, or, in spots, the soil may be almost lacking and the surface barren. The glade habitats that support all *Leavenworthia* species are extremely wet during the late winter and early spring and become extremely dry in summer (Rollins 1963, p. 5). These glades can vary in size from as small as a few meters to larger than 1 square kilometer (km^2) (0.37 square miles (mi^2)) and are characterized as having an open, sunny aspect (lacking canopy) (Quarterman 1950, p. 1; Rollins 1963, p. 5).

Fleshy-fruit gladecress populations are restricted to well-lighted portions of limestone outcroppings. Baskin and Baskin (1988, p. 837) indicated that a high light requirement was common among the endemic plants of rock outcrop plant communities in the unglaciated eastern United States. This obligate need for high light has been supported by field observations showing that these eastern outcrop endemics, such as fleshy-fruit gladecress, grow on well-lighted portion of the outcrops but not in adjacent shaded forests; photosynthesize best in full sun, with a reduction in the presence of heavy shading; and compete poorly with plants that shade them (Baskin and Baskin 1988, p. 837). The most vigorous populations of fleshy-fruit gladecress are located in areas which receive full, or near full, sunlight at the canopy level, and have limited herbaceous competition (Hilton 1997, p. 5). Under these conditions, herbaceous species commonly found in glades in association with fleshy-fruit gladecress are listed in Table 1. Shading and competition are potential threats at the two largest populations of fleshy-fruit gladecress (Hilton 1997, p. 68). Nonnative plants including *Ligustrum vulgare* (common privet) and *Lonicera maackii* (bush honeysuckle) are a significant threat in many glades due to the ever present disturbances that allow for their colonization (Hilton 1997, p. 68).

TABLE 1—CHARACTERISTIC FLORA OF CEDAR GLADE HABITAT

Scientific name	Common name
Primary Characteristic Herbs	
Astragalus tennesseensis	Tennessee milkvetch.
Leavenworthia alabamica	Alabama gladecress.
Leavenworthia uniflora	Michaux's gladecress.
Petalostemum spp.	Prairie clover.
Delphinium tricorne	Dwarf larkspur.
Arabis laevigata	Smooth rockcress.
Schoenolirion croceum	Yellow sunnybell.
Scutellaria parvula	Small skullcap.
Frequent Woody Species	
Juniperus virginiana	Eastern red cedar.

Therefore, based on the information above, we identify open, sunny exposures of limestone outcrops of the Bangor formation within glade plant communities that are characterized by the species listed in Table 1 and have relatively thin, rocky soils that are classified within the Colbert or Talbot soils mapping units as an essential

physical or biological feature for this species.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Short's bladderpod. This species likely is self-incompatible, and nearly 50 percent of extant occurrences are threatened with adverse effects associated with small populations including loss of genetic variation, inbreeding depression, and reduced availability of compatible mates. For this reason, it is essential that habitat for pollinators be conserved in close proximity to known occurrences to increase the likelihood of pollen exchange among compatible mates. Where possible, habitat patches should be protected that would reduce fragmentation between multiple occurrences among which pollinator dispersal could facilitate gene flow.

Pollinators specific to Short's bladderpod have not been studied. Bees from the families Halictidae, Apidae, and Andrenidae were found to be the most common pollinators visiting four other species in the genus *Physaria,* and flies from the families Syrphidae, Tachinidae, and Conopidae also carried *Physaria* pollen (Edens-Meier *et al.* 2011, p. 293; Tepedino *et al.* 2012, pp. 143–145). In their study of pollinators of three species of *Physaria,* Tepedino *et al.* (2012, p. 144) estimated that maximum flight distance ranged from 100 m (330 ft) to 1.4 km (0.9 mi) for Andrenids and 40 to 100 m (130 to 330 ft) for Halictid bees. Because native, ground-nesting bees in the Andrenidae and Halictidae were the most reliable visitors and pollinators of the *Physaria* species they studied, Tepedino *et al.* (2012, p. 145) recommended avoiding physical disruption of the soil nesting substrate and its drainage patterns in sites harboring bee nests.

Short's bladderpod is thought to form soil seed banks (Dr. Carol Baskin, Professor, University of Kentucky, pers. comm., December 2012), and persistence of populations likely is dependent on formation and maintenance of this pool of dormant individuals. Sites where the species occurs should not be subjected to activities that would remove the soil seed bank. Moderate soil disturbance, however, could promote germination from the seed bank in locations where overstory shading and competition from herbaceous and shrub species have caused population declines. Positive responses have been observed following removal of competing vegetation and soil disturbance associated with grading of the roadside at the site where Short's bladderpod occurs in Indiana.

Therefore, based on the information above, we identify reproduction sites containing extant occurrences of the species within habitat patches providing suitable pollinator habitat, and in which surface features and bladderpod seedbed are not subjected to heavy disturbance, to be an essential physical or biological feature for this species.

Whorled sunflower. This species is self-incompatible, and the lack of compatible mates has been suggested as a possible cause of reduced achene production in one population (Ellis *et al.* 2009, p. 1840). Degraded habitat conditions also contribute to poor individual growth and reproductive output in whorled sunflower. Where woody vegetation encroaches on whorled sunflower populations, growth and flower production are reduced. While the species can produce new stems via shoot generation from rhizomes, the production of genetically distinct individuals needed to support population growth and maintain genetic variation within the species is dependent on flowering and outcrossing of compatible mates and production of viable achenes. Therefore, based on the information above, we identify the presence of compatible mates in sites which receive full or partial sunlight for most of the day to be an essential physical or biological feature for this species.

Fleshy-fruit gladecress. Glades where fleshy-fruit gladecress grows have very shallow soils overlying horizontally bedded limestone. Precipitation tends to be very seasonal within the species' geographic range, with wet weather concentrated in the winter and early spring and summer (Lyons and Antonovics 1991).

Fleshy-fruit gladecress is an annual species, the seeds of which germinate in the fall, overwinter as rosettes, and commence a month-long flowering period beginning in mid-March. The first seeds mature in late April, and during most years, the plants dry and drop all of their seeds by the end of May. *Leavenworthia* species are dormant by early summer, helping them to survive the dry period as seed; this dormancy is likely one of the major evolutionary adaptations in this genus enabling its species to endure the extreme drought conditions of late summer (Quarterman 1950, p. 5). As an annual, this species' long-term survival is dependent upon its ability to reproduce and reseed an area every year. Thus, populations decline and move toward extinction if conditions remain unsuitable for reproduction for many consecutive years.

The most vigorous populations of fleshy-fruit gladecress are located in areas which receive full, or near full, sunlight at the canopy level and have limited herbaceous competition (Hilton 1997). Rollins (1963) documented the loss of fleshy-fruit gladecress individuals caused by invading weedy species in fallow agricultural fields in northern Alabama. Under natural conditions, glades are edaphically (related to or caused by particular soil conditions) maintained through processes of drought and erosion interacting with other processes that disrupt encroachment of competing vegetation. The shallow soil, exposed rock, and frequently hot, dry summers create xeric conditions that regulate competition and shading from encroaching vegetation (Hilton 1997, p. 5; McDaniel and Lyons 1987, p. 6; Baskin et al. 1986, p. 138; Rollins 1963, p. 5).

Therefore, based on this information, we identify the presence of shallow soil and exposed rock that discourage competition and shading from encroaching vegetation to be an essential physical or biological feature for this species.

Primary Constituent Elements

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress in areas occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). We consider PCEs to be those specific elements of the physical or biological features and habitat characteristics required to sustain the species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the PCEs described below are specific to these three plants.

Short's Bladderpod

(1) PCE 1—Bedrock formations and outcrops of calcareous limestone, sometimes with interbedded shale or siltstone, in close proximity to the mainstem or tributaries of the Kentucky and Cumberland rivers. These outcrop sites or areas of suitable bedrock geology should be located on steeply sloped hillsides or bluffs, typically on south- to west-facing aspects.

(2) PCE 2—Shallow or rocky, well-drained soils formed from the

weathering of underlying calcareous bedrock formations, which are undisturbed or subjected to minimal disturbance, so as to retain habitat for ground-nesting pollinators and potential for maintenance of a soil seed bank.

(3) PCE 3—Forest communities with low levels of canopy closure or openings in the canopy to provide adequate sunlight for individual and population growth. Invasive, nonnative plants must be absent or present in sufficiently low numbers to not inhibit growth or reproduction of Short's bladderpod.

Whorled Sunflower

(1) PCE 1—Silt loam, silty clay loam, or fine sandy loam soils on land forms including broad uplands, depressions, stream terraces, and floodplains within the headwaters of the Coosa River in Alabama and Georgia and the East Fork Forked Deer and Tuscumbia rivers in Tennessee.

(2) PCE 2—Sites in which forest canopy is absent, or where woody vegetation is present at sufficiently low densities to provide full or partial sunlight to whorled sunflower plants for most of the day, and which support vegetation characteristic of moist prairie communities. Invasive, nonnative plants must be absent or present in sufficiently low numbers to not inhibit growth or reproduction of whorled sunflower.

(3) PCE 3—Occupied sites in which a sufficient number of compatible mates are present for outcrossing and production of viable achenes to occur.

Fleshy-fruit Gladecress

(1) PCE 1—Shallow-soiled, open areas with exposed limestone bedrock or gravel that are dominated by herbaceous vegetation characteristic of glade communities.

(2) PCE 2—Open or well-lighted areas of exposed limestone bedrock or gravel that ensure fleshy-fruit gladecress plants remain unshaded for a significant portion of the day.

(3) PCE 3—Glade habitat that is protected from both native and invasive, nonnative plants to minimize competition and shading of fleshy-fruit gladecress.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain physical and biological features which are essential to the conservation of the species and which may require special management considerations or protection. We believe each unit included in these designations requires special management and protections.

Short's Bladderpod

The features essential to the conservation of Short's bladderpod may require special management considerations or protection to reduce the following threats: (1) Actions that would directly result in removal of soils or indirectly cause their loss due to increased rates of erosion; (2) building, paving, or grazing of livestock within or upslope of Short's bladderpod sites that alters water movement or causes soil erosion that results in sediment deposition in suitable habitat; (3) blasting or removal of hard rock and soil substrates; (4) dumping of trash and debris; (5) prolonged inundation of sites due to manipulation of regulated waters for flood control or other purposes; (6) indiscriminate maintenance of transportation rights-of-way, including grading, mowing, or herbicide application; and (8) shading and competition due to forest canopy closure and encroachment of invasive, nonnative plants.

Management activities that could ameliorate these threats include, but are not limited to: (1) Avoiding areas located in or upslope of Short's bladderpod sites when planning for location of commercial or residential development; maintenance, construction, or expansion of utility and transportation infrastructure; and access for livestock; (2) removing trash and debris that are dumped onto or upslope of Short's bladderpod sites; (3) locating suitable habitat, determining presence or absence of Short's bladderpod, and protecting or restoring as many sites or complexes of sites as possible; (4) evaluating the effects of flow regulation on Short's bladderpod occurrences within the fluctuation zone of regulated river reaches and adjusting management to avoid or minimize prolonged periods of inundation; (5) reaching out to all landowners, including private, State, and Federal landowners, to raise awareness of the plant and its habitat; (5) providing technical or financial assistance to landowners to help in the design and implementation of management actions that protect the plant and its habitat; (6) managing, including reducing, canopy cover and competition from native and invasive, nonnative plants to maintain an intact native forest community with canopy openings or low levels of canopy closure.

Whorled Sunflower

The features essential to the conservation of whorled sunflower may require special management considerations or protection to reduce the following threats: (1) Soil disturbance due to silvicultural site preparation, timber harvest, or cultivation of row crops; (2) indiscriminate herbicide use or mowing; (3) conversion of remnant prairie habitat to agricultural or industrial forestry uses; and (4) excessive shading or competition from native woody species or invasive, nonnative plants.

Management activities that could ameliorate these threats include, but are not limited to: (1) Avoiding areas located in close proximity to whorled sunflower sites when planning for establishing new sites for agriculture or pulpwood and timber production; (2) ensuring that herbicide use or mowing does not occur in whorled sunflower sites during the species' growing season; (3) locating suitable habitat, determining presence or absence of whorled sunflower, and protecting or restoring as many sites or complexes of sites as possible; (4) managing, including prescribed burning, mowing, and bush-hogging, to reduce canopy cover, minimize competition from native and invasive, nonnative plants, and maintain characteristic moist prairie vegetation; (5) reaching out to all landowners, including private, State, and Federal landowners, to raise awareness of the plant and its habitat; and (6) providing technical or financial assistance to landowners to help in the design and implementation of management actions that protect the plant and its habitat.

Fleshy-Fruit Gladecress

The features essential to the conservation of fleshy-fruit gladecress may require special management considerations or protection to reduce the following threats: (1) Actions that remove the soils and alter the surface geology of the glades; (2) building or paving over the glades; (3) construction or excavation up slope that alters water movement (sheet flow or seepage) down slope to gladecress sites; (4) planting trees adjacent to the edges of an outcrop resulting in shading of the glade and accumulations of leaf litter and tree debris; (5) encroachment by nonnative and native invading trees, shrubs, and vines that shade the glade; (6) the use and timing of application of certain herbicides that can harm gladecress seedlings; and (7) access by cattle to gladecress sites where habitat and plants may be trampled.

Management activities that could ameliorate these threats include (but are not limited to): (1) Avoiding limestone glades when planning development,

conversion to agriculture, and other disturbances to glade complexes; (2) avoiding above-ground construction and/or excavations in locations that would interfere with natural water movement to gladecress habitat sites; (3) locating suitable habitat and determining the presence or absence of the species and identifying areas with glade complexes and protecting or restoring as many complexes as possible; (4) reaching out to all landowners, including private and State landowners, to raise awareness of the plant and its specialized habitat; (5) providing technical or financial assistance to landowners to help in the design and implementation of management actions that protect the plant and its habitat; (6) avoiding pine tree plantings near glades; and (7) managing, including brush removal, to maintain an intact native glade vegetation community.

More information on the special management considerations for each critical habitat unit is provided in the individual unit descriptions below.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we also consider whether designating additional areas outside those occupied at the time of listing is necessary to ensure the conservation of the species. As discussed in more detail below, we are not currently proposing to designate any areas outside the geographical area occupied by the species because occupied areas are sufficient for the conservation of the species, and we have no evidence that these species existed beyond their current geographical ranges in habitat types that are not represented by the critical habitat units we propose below. Below we go into more detail about the criteria used to identify critical habitat for Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress.

Areas Occupied by Short's Bladderpod

For the purpose of proposing critical habitat for Short's bladderpod, we define the geographical area currently occupied by the species as required by section 3(5)(A)(i) of the Act. We considered those sites to be occupied where (1) Element Occurrence Records from State conservation agencies (INHDC 2012; KNHP 2012; TNHID 2012) indicate that the species was extant at the time of proposed listing rule (i.e., is considered currently extant), and (2) we determine that forest communities are present and no evidence of substantial ground disturbance is visible from inspection of aerial photography, available through Google Earth.

Areas Not Occupied by Short's Bladderpod

We considered whether there were any specific areas outside the geographical area found to be occupied by Short's bladderpod that are essential for the conservation of the species as required by section 3(5)(A)(i) of the Act. First, we considered whether there was sufficient area for the conservation of the species within the occupied areas determined above. In doing so, we evaluated whether protection or management of currently occupied sites and nearby suitable habitats would provide adequate representation, redundancy, and resiliency for Short's bladderpod conservation. The 26 extant occurrences of Short's bladderpod included in critical habitat units proposed below are distributed among habitats that are representative of those in which the species' occurred in its historical geographic range and, if conserved, should provide adequate redundancy for the species to endure localized, stochastic disturbances. While populations are small at some of these occurrences, there is sufficient habitat available to support population growth; however, some management might be necessary to improve habitat conditions and population growth rates. Conserving or restoring habitat and viable populations at all occupied sites should provide conditions necessary for successful reproduction and population growth and resiliency for the species to recover from acute demographic effects of localized disturbances. Therefore, no areas outside of the currently occupied geographical areas would be essential for the conservation of the species, and we have not proposed any additional areas.

Mapping Short's Bladderpod Critical Habitat

Once we determined the occupied areas, we next delineated proposed critical habitat unit boundaries based on the presence of primary constituent elements. We used data for geology (Kentucky Geological Survey, available online at *http://www.arcgis.com/home/item.html?id=d32dc6edbf9245cdbac3fd7e255d3974;* Moore I. 1967; Wilson 1972, 1975, 1979; Wilson I. 1972, 1980; Marsh I. 1973; Finlayson I. 1980; Kerrigan and Wilson 2002), soils (USDA, Soil Survey Geographic Database, available online at *http://soildatamart.nrcs.usda.gov*), topographic contours, and locations of sites occupied by Short's bladderpod (INHDC 2012; KNHP 2012; TNHID 2012) as a basis for delineating units in ArcGIS. Additionally, we used aerial photography available through Google Earth to determine vegetation cover and for three-dimensional viewing of topographic features. We delineated units around occupied sites, with boundaries determined by the combined spatial arrangement of limestone bedrock, sometimes with interbedded shale or siltstone; shallow or rocky, well-drained soils; steeply sloped topography; and forest vegetation. In order to reduce threats from adjacent land uses, we extended unit boundaries from ridge tops or bluff lines above Short's bladderpod occurrences downslope to either obvious breaks in slope gradient or to the edge of water bodies that form a unit boundary. These units typically include individual occupied sites; however, where appropriate we delineated units so that they encompass more than one occupied site and span intervening areas in which the primary constituent elements are present. We delineated units spanning multiple occupied sites in order to minimize fragmentation and provide areas for pollinator nesting and dispersal to promote gene flow among extant occurrences.

Areas Occupied by Whorled Sunflower

For the purpose of designating critical habitat for whorled sunflower, we defined the geographical area currently occupied by the species as required by section 3(5)(A)(i) of the Act. We define occupied areas in Georgia and Alabama as those areas where the species was present during site visits by the Service during 2012. The most recent survey data available from TNHID (2012) confirmed the presence of whorled sunflower during 2005 and 2009, at the Madison and McNairy County, Tennessee, populations, respectively. Based on inspection of aerial photography for these locations, available through Google Earth, habitat still is present at these sites and no evidence of substantial ground disturbance was apparent; thus, we consider these sites to still be occupied by whorled sunflower.

Areas Not Occupied by Whorled Sunflower

We considered whether there were any specific areas outside the geographical area found to be occupied

by whorled sunflower that are essential for the conservation of the species as required by section 3(5)(A)(i) of the Act. First, we considered whether there was sufficient area for the conservation of the species within the occupied areas determined above. In doing so, we evaluated whether protection or management of currently occupied sites and nearby suitable habitats would provide adequate representation, redundancy, and resiliency for whorled sunflower's conservation. The four extant populations of whorled sunflower are distributed among habitats that we believe are representative of those in which the species' occurred in its historical geographic range and, if conserved, should provide adequate redundancy for the species to endure localized, stochastic disturbances. While populations are small at most of these occurrences, there is sufficient habitat available to support population growth; however, management will be necessary to improve habitat conditions and population growth rates. Conserving or restoring habitat and viable populations at all occupied sites should provide conditions necessary for successful reproduction and population growth and resiliency for the species to recover from acute demographic effects of localized disturbances. Therefore, no areas outside of the currently occupied geographical areas would be essential for the conservation of the species, and we have not proposed any additional areas.

Mapping Whorled Sunflower Critical Habitat

Once we determined the occupied areas, we next delineated proposed critical habitat unit boundaries based on the presence of primary constituent elements. We used data for soils (USDA, Soil Survey Geographic Database, available online at *http://soildatamart.nrcs.usda.gov*) and locations of sites occupied by whorled sunflower as a basis for delineating units in ArcGIS. Additionally, we used aerial photography available through Google Earth to determine vegetation cover and for three-dimensional viewing of topographic features. We delineated units around occupied sites, with boundaries determined by the spatial arrangement of suitable soils (described above in PCE 1 for whorled sunflower) and to provide opportunities for minimizing fragmentation among subpopulations by restoring characteristic prairie vegetation in areas currently used for agricultural or industrial forestry purposes.

Areas Occupied by Fleshy-Fruit Gladecress

For the purpose of designating critical habitat for fleshy-fruit gladecress, we defined the geographical area currently occupied by the species as required by section 3(5)(A)(i) of the Act. We define occupied areas as those where recent surveys in 2011 confirmed the species was present (Shotz 2012, pers. comm.).

Areas Not Occupied by Fleshy-Fruit Gladecress

We considered whether there were any specific areas outside the geographical area found to be occupied by the fleshy-fruit gladecress that are essential for the conservation of the species as required by section 3(5)(A)(ii) of the Act. First, we evaluated whether there was sufficient area for the conservation of the species within the occupied areas determined as described above. To guide what would be considered needed for the species' conservation, we evaluated the six sites where the species is known to occur. Currently occupied sites are distributed across the historical range of the species and are representative of the landscape settings and soil types that have been documented at gladecress occurrences. Five of the six units proposed within occupied areas contain suitable habitat (with special management) for natural expansion of existing populations or possible future augmentation if determined necessary during future recovery planning and implementation. Therefore, no areas outside of the currently occupied geographical areas would be essential for the conservation of the species, and we have not proposed any additional areas.

Mapping Fleshy-Fruit Gladecress Critical Habitat

Once we determined the occupied areas, we next delineated proposed critical habitat unit boundaries based on the presence of primary constituent elements. We used various GIS layers, soil surveys, aerial photography, and known locations of the extant and historical populations. We used ArcGIS to delineate units around occupied sites, encompassing adjacent areas where the primary constituent elements were present to provide suitable habitat for natural expansion of the populations. The six units in the proposed designation include the species' entire historical range. All of the units contain the primary constituent elements essential for the conservation of fleshy-fruit gladecress.

When determining proposed critical habitat boundaries for all three species, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the three plants. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in adjacent critical habitat.

We are proposing for designation of critical habitat lands that we have determined are occupied at the time of listing and contain sufficient elements of physical or biological features to support life-history processes essential for the conservation of Short's bladderpod, whorled sunflower, or fleshy-fruit gladecress. Some units contain all of the identified elements of physical or biological features and support multiple life-history processes. Some units contain only some elements of the physical or biological features necessary to support the use of that particular habitat by Short's bladderpod, whorled sunflower, or fleshy-fruit gladecress.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the Proposed Regulation Promulgation section. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0086, on our Internet site at *http://www.fws.gov/cookeville,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Proposed Critical Habitat Designation

Short's Bladderpod

We are proposing 20 units as critical habitat for Short's bladderpod. The critical habitat areas we describe below constitute our current best assessment of

areas that meet the definition of critical habitat for Short's bladderpod. All these units are occupied at the time of listing. The areas we propose as critical habitat are: (1) Kings and Queens Bluff, (2) Lock B Road, (3) Jarrel Ridge Road, (4) Cheatham Lake, (5) Harpeth River, (6) Montgomery Bell Bridge, (7) Nashville and Western Railroad, (8) River Trace, (9) Old Hickory Lake, (10) Coleman-Winston Bridge, (11) Cordell Hull Reservoir, (12) Funns Branch, (13) Wartrace Creek, (14) Camp Pleasant Branch, (15) Kentucky River, (16) Owenton Road, (17) Little Benson Creek, (18) Boone Creek, (19) Delaney Ferry Road, and (20) Bonebank Road. The approximate area of each proposed critical habitat unit, broken down by land ownership, is shown in Table 20.

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR SHORT'S BLADDERPOD

Critical habitat unit	Private ha (ac)	State/local ha (ac)	Federal ha (ac)	Size of unit ha (ac)
1. Kings and Queens Bluff	7.6 (18.9)	.....	*3.0 (7.3)	7.6 (18.9)
2. Lock B Road	10.1 (25.0)	.....	*0.3 (0.8)	10.1 (25.0)
3. Jarrel Ridge Road	5.2 (12.8)	.....	*0.4 (1.1)	5.2 (12.8)
4. Cheatham Lake	19.1 (47.2)	3.4 (8.3)	4.9 (12.0)	27.3 (67.5)
5. Harpeth River	8.2 (20.3)	.....	17.3 (42.8)	25.5 (63.1)
6. Montgomery Bell Bridge	2.1 (5.3)	.....	9.0 (22.3)	11.2 (27.7)
7. Nashville and Western Railroad	20.8 (51.4)	8.1 (20.0)	1.5 (3.8)	30.5 (75.3)
8. River Trace	42.8 (105.7)	.....	*5.6 (13.8)	42.8 (105.7)
9. Old Hickory Lake	1.9 (4.8)	.....	2.9 (7.1)	4.8 (11.9)
10. Coleman-Winston Bridge	4.1 (10.1)	.....	3.3 (8.1)	7.4 (18.2)
11. Cordell Hull Reservoir	.....	.....	12.3 (34.2)	12.3 (34.2)
12. Funns Branch	.....	.....	20.8 (51.3)	20.8 (51.3)
13. Wartrace Creek	.....	.....	37.5 (92.6)	37.5 (92.6)
14. Camp Pleasant Branch	17.4 (42.9)	.....	.....	17.4 (42.9)
15. Kentucky River	83.7 (206.7)	9.4 (23.3)	.....	93.1 (230.0)
16. Owenton Road	1.3 (3.3)	1.5 (3.7)	.....	2.8 (7.0)
17. Little Benson Creek	9.4 (23.3)	.....	.....	9.4 (23.3)
18. Boone Creek	5.0 (12.4)	.....	.....	5.0 (12.4)
19. Delaney Ferry Road	0.6 (1.4)	.....	.....	0.6 (1.4)
20. Bonebank Road	.....	1.7 (4.3)	.....	1.7 (4.3)
Total	239.3 (591.5)	24.1 (59.6)	118.8 (297.2)	373.0 (925.5)

Note: Area sizes may not sum due to rounding.
*Indicates U.S. Army Corps of Engineers easements, which are not added to Size of Unit because these lands are included in ha (ac) figure given for the private lands on which easements are held.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for Short's bladderpod, below. All of the proposed critical habitat units are currently occupied and, except as specified below, contain all of the primary constituent elements of the physical and biological features essential to the conservation of the species.

Unit 1: Kings and Queens Bluff

Unit 1 consists of 7.6 ha (18.9 ac) of private land, but the U.S. Army Corps of Engineers (Corps of Engineers) holds flood easements on approximately 40 percent of this land. This unit is located in Montgomery County, Tennessee, on a bluff on the right descending bank of the Cumberland River within the city limits of Clarksville, approximately 0.16 km (0.10 mi) south of the intersection of State Route 12 (Ashland City Road) and Queens Bluff Way. Beginning approximately 0.28 km (0.18 mi) south of the easternmost intersection of Ashland City Road (US–41a Bypass) and Queens Bluff Road, this unit parallels the Cumberland River in a downstream direction for approximately 1.7 km (1.1 mi).

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats related to erosion or prolonged inundation due to water level manipulation; changes in land use, including residential or commercial construction, which could cause removal of forest vegetation or soils or soil loss due to erosion; and shading and competition due to encroachment of native and invasive, nonnative plants.

Unit 2: Lock B Road

Unit 2 consists of 10.1 ha (25.0 ac) of privately owned land, but the Corps of Engineers holds flood easements on approximately 3 percent of this land. This unit is located in Montgomery County, Tennessee, approximately 6.9 km (4.3 mi) south of the city limits of Clarksville, on a hillside that lies to the east and west of Lock B Road North, beginning approximately 0.8 km (0.5 mi) south of its junction with Gholson Road and continuing south for approximately 0.4 km (0.25 mi), at which point Lock B Road North veers to the southwest. From this point, this unit continues south for approximately 1.0 km (0.6 mi) along the hillside that is east of Lock B Road North. The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats related to potential right-of-way construction or maintenance using herbicides or mechanized equipment along Lock B Road North or the Illinois Central Railroad, both of which traverse portions of the unit, and shading or competition due to encroachment of native and invasive, nonnative plants.

Unit 3: Jarrel Ridge Road

Unit 3 consists of 5.2 ha (12.8 ac) of privately owned lands, but the Corps of Engineers holds flood easements on approximately 8 percent of this land. This unit is located in Montgomery County, Tennessee, approximately 10 km south of the city limit of Clarksville, on a hillside that lies west and north of the southern terminus of Jarrel Ridge Road.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats related to erosion or prolonged

inundation due to water level manipulation; changes in land use, including residential or commercial construction, which could cause removal of forest vegetation or soils or soil loss due to erosion; potential right-of-way construction or maintenance using herbicides or mechanized equipment along Jarrel Ridge Road at the unit boundary or the Illinois Central Railroad, which traverses the unit; and shading or competition due to encroachment of native and invasive, nonnative plants.

Unit 4: Cheatham Lake

Unit 4 consists of 27.3 ha (67.5 ac) of privately owned, local government, and federal lands. This unit is located in Cheatham County, Tennessee, approximately 9.0 km (5.6 mi) west-northwest of the city limits of the town of Ashland City, on a series of hillsides that begins approximately 0.8 km (0.5 mi) northeast of the junction of Beech Grove Road and Cheatham Dam Road and arcs in a southeasterly direction for approximately 2.2 km (1.4 mi). Here, the unit crosses Cheatham Dam Road, and continues for approximately 2.2 km in a southeasterly arc to its eastern boundary on the right descending bank of the Cumberland River, approximately 0.18 km (0.11 mi) south of Kimbrough Road. The land within this unit is approximately 70 percent privately owned, 12 percent owned by Ashland City, and 18 percent owned by the Corps of Engineers.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats related to erosion or prolonged inundation due to water level manipulation; changes in land use, including residential or commercial construction, which could cause removal of forest vegetation or soils or soil loss due to erosion; potential right-of-way construction or maintenance using herbicides or mechanized equipment along the Illinois Central Railroad, which traverses the unit; and shading or competition due to encroachment of native and invasive, nonnative plants.

Unit 5: Harpeth River

Unit 5 consists of 25.5 ha (63.1 ac) of privately owned and federal land in Cheatham County, Tennessee. This unit is located approximately 5 km (3.1 mi) west of the city limits of the town of Ashland City, on the west slope of a hillside and associated bluffs that begin on the point of land formed by the confluence of Cumberland and Harpeth rivers and extend upstream along the right descending bank of the Harpeth River, reaching the unit's southernmost boundary approximately 0.6 km (0.4 mi) east of SR–49, where it crosses the Harpeth River. The land within this unit is approximately 32 percent privately owned, and 68 percent is owned by the Corps of Engineers.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats related to erosion or prolonged inundation due to water level manipulation; changes in land use, including residential or commercial construction, which could cause removal of forest vegetation or soils or soil loss due to erosion; and shading or competition due to encroachment of native and invasive, nonnative plants.

Unit 6: Montgomery Bell Bridge

Unit 6 consists of 11.2 ha (27.7 ac) of privately owned and federal land in Cheatham and Dickson Counties, Tennessee. This unit is located approximately 5.5 km (3.4 mi) west of the city limits of the town of Ashland City, on a hillside and bluffs on the left descending bank of the Harpeth River that begin approximately 0.4 km (0.27 mi) east of the Montgomery Bell Bridge, where SR–49 crosses the river and bisects the unit, and parallels the river in an upstream direction for approximately 1.8 km (1.1 mi). The land within this unit is approximately 19 percent privately owned, and 81 percent is owned by the Corps of Engineers.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats related to erosion or prolonged inundation due to water level manipulation; changes in land use, including residential or commercial construction, which could cause removal of forest vegetation or soils or soil loss due to erosion; and shading or competition due to encroachment of native and invasive, nonnative plants.

Unit 7: Nashville and Western Railroad

Unit 7 consists of 30.5 ha (75.3 ac) of privately owned, local government, and federal land in Cheatham County, Tennessee. This unit is located along the southwest city limit of the town of Ashland City, on hillsides and bluffs that begin approximately 0.26 km (0.16 mi) east of the confluence of Marrowbone Creek and the Cumberland River and extend upstream on the right descending bank of the Cumberland River for approximately 2.3 km (1.4 mi). Here, the unit continues in a southeasterly direction for approximately 0.9 km (0.5 mi) from the point where the river veers away from the hillside and bluffs. The land within this unit is approximately 68 percent privately owned, 27 percent owned by the Cheatham County Rail Association, and 5 percent owned by the Corps of Engineers.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats related to erosion or prolonged inundation due to water level manipulation; changes in land use, including residential or commercial construction, which could cause removal of forest vegetation or soils or soil loss due to erosion; potential right-of-way construction or maintenance using herbicides or mechanized equipment along the Nashville and Western Railroad, which traverses the unit; and shading or competition due to encroachment of native and invasive, nonnative plants.

Unit 8: River Trace

Unit 8 consists of 42.8 ha (105.7 ac) of privately owned land, with the exception of the River Trace road right-of-way. The Corps of Engineers holds flood easements on approximately 13 percent of the lands within the unit. This unit is located in Davidson and Cheatham Counties, Tennessee, on hillsides and bluffs approximately 0.9 km (0.6 mi) southeast of the city limit of the town of Ashland City, beginning at the western extent of River Trace and extending along both sides of this road in a southeasterly direction for a distance of approximately 2.3 km (1.4 mi). Here, the unit leaves River Trace and continues along the hillside and bluffs on the right descending bank of the Cumberland River in an upstream direction for approximately 2.1 km (1.3 mi).

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats related to erosion or prolonged inundation due to water level manipulation; changes in land use, including residential or commercial construction, which could cause removal of forest vegetation or soils or soil loss due to erosion; potential right-of-way construction or maintenance using herbicides or mechanized equipment along River Trace or the Nashville and Western Railroad, both of which traverse the unit; and shading or competition due to encroachment of native and invasive, nonnative plants.

Unit 9: Old Hickory Lake

Unit 9 consists of 4.8 ha (11.9 ac) of privately owned and federal lands in Trousdale County, Tennessee. This unit is located approximately 3.5 km (2.2 mi) west of the southern city limits of the town of Hartsville and 0.5 km (0.3 mi) south of Oldham Road, on a hillside and bluffs on the right descending bank of the Cumberland River. Beginning approximately 0.4 km (0.25 mi) downstream of the mouth of Second Creek, this unit parallels the Cumberland River in a downstream direction for approximately 0.7 km (0.4 mi). The land within this unit is approximately 40 percent privately owned, and 60 percent is owned by the Corps of Engineers.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats related to erosion or prolonged inundation due to water level manipulation; changes in land use, including residential or commercial construction, which could cause removal of forest vegetation or soils or soil loss due to erosion; and shading or competition due to encroachment of native and invasive, nonnative plants.

Unit 10: Coleman-Winston Bridge

Unit 10 consists of 7.4 ha (18.2 ac) of privately owned and federal lands in Trousdale County, Tennessee. The unit is located at the southern city limit of the town of Hartsville, on a hillside and bluffs overlooking the Cumberland River. Beginning on the right descending bank approximately 0.5 km (0.3 mi) east of SR–141, which bisects the unit where it crosses the Cumberland River at the Coleman-Winston Bridge, this unit parallels the river in a downstream direction for approximately 1.1 km (0.7 mi). The land within this unit is approximately 55 percent privately owned, and 45 percent is owned by the Corps of Engineers.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats related to erosion or prolonged inundation due to water level manipulation; changes in land use, including residential or commercial construction, which could cause removal of forest vegetation or soils or soil loss due to erosion; potential right-of-way construction or maintenance using herbicides or mechanized equipment along SR–141, which bisects the unit; and shading or competition due to encroachment of native and invasive, nonnative plants.

Unit 11: Cordell Hull Reservoir

Unit 11 consists of 12.3 ha (34.2 ac) of federal lands in Smith County, Tennessee. This unit is located approximately 4.3 km (2.7 mi) north of the city limits of the town of Carthage, on hillsides and bluffs on the right descending bank of the Cumberland River. Beginning approximately 2.0 km (1.25 mi) upstream of the Cordell Hull Dam, this unit parallels the river in an upstream direction for approximately 0.6 km (0.4 mi), where it crosses a 0.3-km (0.2-mi) expanse of open water, and then continues paralleling the river for a distance of 1.2 km (0.7 mi). All of the land within this unit is owned by the Corps of Engineers, and the open water is not included in the area of the unit reported above.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats related to erosion or prolonged inundation due to water level manipulation; changes in land use, including residential or commercial construction, which could cause removal of forest vegetation or soils or soil loss due to erosion; and shading or competition due to encroachment of native and invasive, nonnative plants.

Unit 12: Funns Branch

Unit 12 consists of 20.8 ha (51.3 ac) of federal lands in Jackson County, Tennessee. This unit is located approximately 12.1 km (7.5 mi) southwest of the city limits of the town of Gainesboro, on hillsides and bluffs on the right descending bank of the Cumberland River. Beginning approximately 0.4 km (0.2) mi upstream of the mouth of Funns Branch, this unit parallels the river in an upstream direction for approximately 1.0 km (0.65 mi) where it crosses a 0.3-km (0.2-mi) expanse of open water, and then continues paralleling the river for a distance of approximately 1.0 km (0.64 mi). All of the land within this unit is owned by the Corps of Engineers, and the open water is not included in the area of the unit reported above.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats related to erosion or prolonged inundation due to water level manipulation; changes in land use, including residential or commercial construction, which could cause removal of forest vegetation or soils or soil loss due to erosion; and shading or competition due to encroachment of native and invasive, nonnative plants.

Unit 13: Wartrace Creek

Unit 13 consists of 37.5 ha (92.6 ac) of federal lands in Jackson County, Tennessee. This unit is located approximately 7.7 km (4.8 mi) west of the city limits of the town of Gainesboro, on hillsides and bluffs on the right descending bank of the Cumberland River. Beginning at the mouth of Indian Creek, this unit parallels the river in a downstream direction for approximately 1.6 km (1.0 mi), where it crosses the mouth of Wartrace Creek, and then continues paralleling the river for a distance of 2.5 km (1.5 mi). All of the land within this unit is owned by the Corps of Engineers, and areas of open water are not included in the area of the unit reported above.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats related to erosion or prolonged inundation due to water level manipulation; changes in land use, including residential or commercial construction, which could cause removal of forest vegetation or soils or soil loss due to erosion; and shading or competition due to encroachment of native and invasive, nonnative plants.

Unit 14: Camp Pleasant Branch

Unit 14 consists of 17.4 ha (42.9 ac) of privately owned lands in Franklin County, Kentucky. This unit is located approximately 8.3 km (5.8 mi) north of the city limits of Frankfort, on hillsides near Camp Pleasant Branch, a tributary to Elkhorn Creek. Beginning approximately 0.29 km (0.18 mi) west of the intersection of Indian Gap Road and Camp Pleasant Road, the unit begins in a hollow north of Indian Gap Road and extends to the east and north along hillsides above the right descending bank of Camp Pleasant Branch for approximately 0.75 km (0.5 mi) to the intersection of Camp Pleasant Road and Gregory Woods Road. Here the unit crosses Gregory Woods Road and extends north for a distance of approximately 0.58 km (0.36 mi), encompassing the hillside to the east of the road.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats related to changes in land use, including residential or commercial construction, which could cause removal of forest vegetation or soils or soil loss due to erosion; potential right-of-way construction or maintenance using herbicides or mechanized

equipment along Indian Gap Road, Camp Pleasant Road, or Gregory Woods Road, which are adjacent to the unit; and shading or competition due to encroachment of native and invasive, nonnative plants.

Unit 15: Kentucky River

This unit consists of 93.1 ha (230.0 ac) of privately owned and State land in Franklin County, Kentucky. This unit begins within the northwestern city limit of Frankfort, on a hillside that parallels U.S.-421 on its east side from approximately 0.21 km (0.13 mi) southeast of its junction with Clifty Drive to approximately 0.23 km (0.15 mi) northwest of its junction with U.S.-127. Here the unit follows the topography of the hillside as it turns away from the road to the east, leaving the city limits, and then arcs to the northeast, before abruptly turning back in a westerly direction. From this point, the hillside and this unit extend in a westerly direction for approximately 0.7 km (0.4 mi) and then parallel the Kentucky River in a downstream direction in an arc approximately 5.3 km (3.3 mi) in length on its left descending bank, encompassing hillsides in two hollows that extend from the river to the west. Approximately 90 percent of the land in this unit is privately owned, and the Commonwealth of Kentucky owns approximately 10 percent, which is part of a State nature preserve.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats related to erosion or prolonged inundation due to water level manipulation; changes in land use, including residential or commercial construction, which could cause removal of forest vegetation or soils or soil loss due to erosion; potential right-of-way construction or maintenance using herbicides or mechanized equipment along U.S. -421, where it parallels the unit; and shading or competition due to encroachment of native and invasive, nonnative plants.

Unit 16: Owenton Road

Unit 16 consists of 2.8 ha (7.0 acres) of privately owned and City of Frankfort municipal park lands in Franklin County, Kentucky. The unit is located approximately 0.1 km (0.08 mi) north of the city limits of Frankfort on a hill that is adjacent to and west of U.S.-127 (Owenton Road), approximately 0.6 km (0.4 mi) north of the intersection of U.S.-127 and U.S.-421. The land within this unit is approximately 46 percent privately owned, and 54 percent is owned by the City of Frankfort.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats related to changes in land use, including residential or commercial construction, which could cause removal of forest vegetation or soils or soil loss due to erosion; potential right-of-way construction or maintenance using herbicides or mechanized equipment on U.S.–127; and shading or competition due to encroachment of native and invasive, nonnative plants.

Unit 17: Little Benson Creek

Unit 17 consists of 9.4 ha (23.3 ac) of privately owned lands in Franklin County, Kentucky, located within the city limits of Frankfort. Beginning approximately 1.1 km (0.7 mi) south of the intersection of Mills Lane and Ninevah Road, this unit lies on a hillside on the east side of Ninevah Road and extends to the south for approximately 0.5 km (0.3 mi), where it crosses Ninevah Road and follows a hillside that parallels Ninevah Road for approximately 1.0 km (0.65 mi) on its west side.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats related to changes in land use, including residential or commercial construction, which could cause removal of forest vegetation or soils or soil loss due to erosion; potential right-of-way construction or maintenance using herbicides or mechanized equipment on Ninevah Road; and shading or competition due to encroachment of native and invasive, nonnative plants.

Unit 18: Boone Creek

Unit 18 consists of 5.0 ha (12.4 ac) of privately owned lands in Clark County, Kentucky. This unit is located approximately 13.2 km (8.2 mi) southwest of the city limits of Winchester, and begins adjacent to Grimes Mill Road approximately 0.17 km north of the Fayette and Clark County line. From here, the unit extends on a hillside to the east for a distance of approximately 0.21 km (0.13 mi), where the unit and hillside then parallel a bend in Boone Creek on its left descending bank for a distance of approximately 0.68 km (0.42 mi).

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats related to changes in land use, including residential or commercial construction, which could cause removal of forest vegetation or soils or soil loss due to erosion; potential right-of-way construction or maintenance using herbicides or mechanized equipment on Grimes Road; and shading or competition due to encroachment of native and invasive, nonnative plants.

Unit 19: Delaney Ferry Road

Unit 19 consists of 0.6 ha (1.4 ac) of privately owned lands in Woodford County, Kentucky. This unit is located approximately 7.8 km (4.8 mi) south of the city of Versailles. Beginning approximately 2.1 km (1.3 mi) east of the intersection of Troy Pike and Delaney Ferry Road, this unit extends approximately 0.08 km (0.05 mi) northeast along Delaney Ferry Road, where the unit boundary turns to the northwest for approximately 0.08 km (0.05 mi). From this northeast corner of the unit, the boundary extends to the southwest approximately 0.05 km (0.03 mi), where it turns to the southeast, paralleling a driveway for 0.05 km (0.03 mi) before turning to the southwest for approximately 0.03 km (0.02 mi). From this point the unit boundary turns to the southeast for approximately 0.05 km (0.03 mi), returning to the starting point.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats of shading or competition due to encroachment of native and invasive, nonnative plants. The current landowner manages encroaching vegetation to prevent shading and competition where Short's bladderpod occurs within the unit.

Unit 20: Bonebank Road

Unit 20 consists of 1.7 ha (4.3 ac) of lands in Posey County, Indiana, which are owned by the Indiana Department Natural Resources. This unit is located approximately 13 km (8.1 mi) southwest of the city limits of Mt. Vernon, beginning at the intersection of Graddy Road and Bonebank Road and paralleling Bonebank Road on its west side for a distance 0.73 km (0.45 mi) north of the intersection. The surface geology at this site—Quaternary glacial outwash—and soils are markedly different from other sites on calcareous geology throughout the rest of the species' range. However, this site supports an occurrence that has numbered in the hundreds to more than a thousand individuals in the past, and the PCE of forest vegetation with canopy openings (PCE 3) is present at the road edge.

The feature essential to the conservation of the species in this unit may require special management considerations or protection to address threats of shading or competition due to encroachment of native and invasive, nonnative plants.

Whorled Sunflower

We are proposing four units as critical habitat for whorled sunflower. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for whorled sunflower. All these units are occupied at the time of listing. The four areas we propose as critical habitat are: (1) Mud Creek, (2) Coosa Valley Prairie, (2) Prairie Branch, and (4) Pinson. The approximate area of each proposed critical habitat unit is shown in Table 3. All of the proposed critical habitat units for this species are located entirely on privately owned land.

TABLE 3—PROPOSED CRITICAL HABITAT UNITS FOR WHORLED SUNFLOWER.

Critical habitat unit	County, state	Hectares	Acres
1. Mud Creek	Cherokee, Alabama	210.6	520.4
2. Coosa Valley Prairie	Floyd, Georgia	366.9	906.5
3. Prairie Branch	McNairy, Tennessee	6.0	14.9
4. Pinson	Madison, Tennessee	40.7	100.5
Total		624.2	1,542.3

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for whorled sunflower, below.

Unit 1: Mud Creek

Unit 1 consists of 210.6 ha (520.4 ac) in Cherokee County, Alabama, located approximately 11.6 km (7.2 mi) southeast of the city limits of Cedar Bluff. The unit begins approximately 0.06 km (0.04 mi) north of the junction of CR–164 and CR–29 and extends in a northerly direction to encompass much of the drainage area of an unnamed tributary to Mud Creek and to the northeast to encompass much of the drainage area of a second unnamed tributary to Mud Creek. The easternmost boundary of this unit is adjacent to CR–101, from approximately 1.0 km (0.6 mi) to 1.4 km (0.9 mi) north of its junction with CR–164. Silt loam and silty clay loam soils are present throughout the unit, spanning broad uplands, and terraces and flood plains of headwater streams in the Coosa River watershed (PCE 1).

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats of soil disturbance due to silvicultural site preparation or timber harvest; indiscriminate herbicide use or mowing for silvicultural purposes or road right-of-way maintenance; conversion of remnant prairie habitat to agricultural or industrial forestry uses; and excessive shading or competition from native woody species or invasive, nonnative plants.

Unit 2: Coosa Valley Prairie

Unit 2 consists of 366.9 ha (906.5 ac) of privately owned lands in Floyd County, Georgia, located approximately 4.5 km (2.8 mi) northwest of the city limits of Cave Spring. This unit corresponds to the boundary of The Nature Conservancy's conservation easement on lands owned by The Campbell Group, a site commonly referred to as the Coosa Valley Prairie. The northern boundary of this unit follows Jefferson Road for approximately 1.4 km (0.9 mi) in a southeasterly direction, beginning approximately 1.7 km (1.0 mi) east of the Alabama-Georgia State line. From the eastern extent on Jefferson Road, the unit boundary follows an unnamed dirt road south for a distance of approximately 1.5 km (0.9 mi), where the boundary turns to the west and south before turning back to the north and again to the west, reaching the Alabama-Georgia State line. Here, the unit follows the State line in a northwest direction for approximately 0.8 km (0.5 mi) before turning east and following an unnamed dirt road in a northeasterly direction for approximately 2.7 km (1.7 mi) and reuniting with the northern boundary on Jefferson Road. Silt loam and silty clay loam soils are present throughout the unit, spanning broad uplands, depressions, and terraces and flood plains of headwater streams in the Coosa River watershed (PCE 1). Prairie openings and woodlands with low levels of canopy cover (PCE 2) are present throughout much of the unit. While Ellis and McCauley (2009, pp. 1837–1838) found very few viable achenes and low germination rates at this site, whorled sunflower has responded favorably to habitat management efforts by increasing in numbers, and there likely are now a sufficient number of compatible mates for production of viable achenes (PCE 3) at this site.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats of soil disturbance due to silvicultural site preparation or timber harvest; indiscriminate herbicide use or mowing for silvicultural purposes or road right-of-way maintenance; conversion of remnant prairie habitat to agricultural or industrial forestry uses, and excessive shading or competition from native woody species or invasive, nonnative plants.

Unit 3: Prairie Branch

Unit 3 consists of 6.0 ha (14.9 ac) of privately owned land in McNairy County, Tennessee, and is located approximately 0.6 km (0.5 mi) south of the easternmost city limit of Ramer. This unit is located along Prairie Branch, a tributary to Muddy Creek, beginning approximately 0.42 km (0.26 mi) upstream of the point where it passes under Mt. Vernon Road and extending downstream for approximately 2.0 km (1.2 mi). Within this reach, the critical habitat unit extends forms a buffer extending 15 m (50 ft) upslope from the tops of the banks on both sides of Prairie Branch. Sandy loam soils (PCE 1) are present throughout the unit, as are small patches of vegetation containing whorled sunflower and other wet prairie species (PCE 2).

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats of soil disturbance due to agricultural practices; indiscriminate herbicide use or mowing for road or railroad right-of-way maintenance; conversion of remnant prairie habitat to

agricultural uses; and competition from invasive, nonnative plants.

Unit 4: Pinson

Unit 4 consists of 40.7 ha (100.5 ac) of privately owned land in Madison County, Tennessee, and is located approximately 4.1 km (2.5 mi) northwest of the city limits of Henderson, Tennessee. Beginning approximately 0.7 km southeast of the junction of U.S.–45 and Bear Creek Road, this unit extends approximately 0.08 km (0.05 mi) northeast of U.S.–45, crossing a railroad track, and then turns in a southeasterly direction, paralleling the track for a distance of approximately 0.5 km (0.3 mi). From this corner, the unit boundary turns southwest for a distance of approximately 0.79 km (0.49 mi), and then turns to the northwest for a distance of approximately 0.65 km (0.4 mi). From this corner, the unit boundary turns to the northeast for a distance of approximately 0.63 km (0.39 mi). Silt loam soils (PCE 1) are present throughout the unit, small patches of vegetation containing whorled sunflower and wet prairie species (PCE 2) are present, and a sufficient number of compatible mates are present for the production of a limited number of viable achenes (PCE 3) (Ellis and McCauley 2009, p. 1838).

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats of soil disturbance due to agricultural practices; indiscriminate herbicide use or mowing road or railroad right-of-way maintenance; conversion of remnant prairie habitat to agricultural uses; and excessive shading or competition from native woody species or invasive, nonnative plants. Much of the land within this unit has been converted to agricultural uses, but is included because of the potential for decreasing fragmentation among the subpopulations that are present in this unit by restoring suitable vegetation within previously converted lands.

Fleshy-Fruit Gladecress

We are proposing six units as critical habitat for fleshy-fruit gladecress. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for fleshy-fruit gladecress. All these units are occupied at the time of listing. The six areas we propose as critical habitat are: (1) Bluebird Glades; (2) Stover Branch Glades; (3) Indian Tomb Hollow Glade; (4) Cedar Plains South; (5) Cedar Plains North; and (6) Massey Glade. The approximate area of each proposed critical habitat unit is shown in Table 4.

TABLE 4—PROPOSED CRITICAL HABITAT UNITS FOR FLESHY-FRUIT GLADECRESS

Critical habitat unit	County	Ownership	Hectares	Acres
1. Bluebird Glades	Lawrence	Private	0.2	0.5
2. Stover Branch Glades	Lawrence	Private	3.2	7.8
3. Indian Tomb Hollow Glade	Lawrence	Federal	0.5	1.1
4. Cedar Plains South	Morgan	Private	0.04	0.1
5. Cedar Plains North	Morgan	Private	1.7	4.2
6. Massey Glade	Morgan	Private	2.75	6.8
Total			8.4	20.5

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for fleshy-fruit gladecress, below.

Unit 1: Bluebird Glades

Unit 1 consists of 0.2 ha (0.5 ac) of privately owned land located in southeast Lawrence County, Alabama. The unit contains two subpopulations and is located along Alabama State Route 157 approximately 3.5 km (2.2 mi) southeast of the intersections of State Routes 36 and 157, approximately 3.7 km (2.3 mi) southwest of Danville, Alabama. These plants are located within a highly disturbed, limestone glade within a former mobile home site. Well-lighted, open areas (PCE 2), with shallow soils and exposed limestone bedrock or gravel that are dominated by characteristic glade vegetation (PCE 1), are present within the unit.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats of the invasion of exotic species into open glades and possible changes in land use, including road widening or development. Due to human-derived disturbances, exotic species, most notably Chinese privet and Japanese honeysuckle, threaten this site (Schotz 2009, pp. 13–14).

Unit 2: Stover Branch Glades

Unit 2 consists of 3.2 ha (7.8 ac) of privately owned land located in southeast Lawrence County, Alabama. The unit contains two subpopulations; one subpopulation is located on the southwest side of County Road 203 approximately 1.4 km (0.9 mi) south-southeast of Alabama State Route 157, and one subpopulation is located along the southwest side of State Route 157, approximately 1.6 to 2.1 km (1 to 1.3 mi) southeast of State Route 36, in Speake, Alabama. These subpopulations are located within a pasture and are actively maintained by livestock grazing. Well-lighted, open areas (PCE 2), with shallow soils and exposed limestone bedrock or gravel that are dominated by characteristic glade vegetation (PCE 1), are present within the unit.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats of invasive species into open glades and incompatible livestock grazing. Invasive species encroachment and continuous livestock grazing during the plant's reproductive cycle constitute ongoing threats to this site (Schotz 2009, pp. 15–16).

Unit 3: Indian Tomb Hollow Glade

Unit 3 consists of 0.5 ha (1.1 ac) of federally owned land located within the Bankhead National Forest in Lawrence County, Alabama. The unit is located on the west and northwest side of County Road 86 at a point roughly 4.5 km (2.8 mi) south of State Route 36 near Speake, Alabama. Habitat in this unit consists of a relatively small glade characterized by a flat limestone outcrop that is heavily buffered by nearly impenetrable tangles of eastern red cedar and upland swamp privet. Well-lighted, open areas (PCE 2), with shallow soils and exposed limestone bedrock or gravel that are dominated by characteristic glade vegetation (PCE 1), are present within the unit. The U.S. Forest Service provides management to control encroachment of invasive species (PCE 3).

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats of the invasion of exotic species into open glade and damage from vehicles. Moderate encroachment of exotic species, most notably Chinese privet and Japanese honeysuckle, threatens this site along the glade periphery (Schotz 2009, pp. 18–19). This site also shows minimal incidence of trash disposal and damage from recreational vehicles.

Unit 4: Cedar Plains South

Unit 4 consists of 0.04 ha (0.1 ac) of privately owned land located in Morgan County, Alabama. This unit is located on Cedar Plains Road, 1.2 km (0.75 mi) south of County Road 55 and approximately 8 km (5 mi) west of the junction of U.S. Highway 31 and County Road 55 in Falkville. This population represents an excellent landscape context but contains the smallest number of plants of any of the known occurrences. Habitat in this unit consists of a well-lighted limestone glade opening (PCE 2) located within a limestone forest primarily comprised of eastern red cedar and various other hardwoods. Herbaceous vegetation characteristic of glade communities is present within the well-lighted glade (PCE 1), and competition and shading from native and invasive, nonnative plants are currently not a threat to the habitat in this unit (PCE 3). The features essential to the conservation of the species in this unit may require special management considerations or protections to prevent future adverse effects due to competition and shading caused by encroachment of native and invasive, nonnative plants.

Unit 5: Cedar Plains North

Unit 5 consists of 1.7 ha (4.2 ac) of privately owned land located in Morgan County, Alabama. This unit is located on Cedar Plains Road, from 0.6 to 1 km (0.4 to 0.6 mi) north of County Road 55, approximately 8 km (5 mi) west of the junction of U.S. Highway 31 and County Road 55 in Falkville. These populations are located within a pasture and are actively maintained by livestock grazing. Well-lighted, open areas (PCE 2), with shallow soils and exposed limestone bedrock or gravel that are dominated by characteristic glade vegetation (PCE 1), are present within the unit. This glade complex, although subjected to ongoing agricultural interests, represents the greatest concentration of plants currently known for the species.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats of invasive species into open glades and incompatible livestock grazing. Invasive species encroachment and continuous livestock grazing during the plant's reproductive cycle constitute ongoing threats to this site (Schotz 2009, pp. 23–24).

Unit 6: Massey Glade

Unit 6 consists of 2.75 ha (6.8 ac) of privately owned land located in Morgan County, Alabama. This unit is located on County Road 55, 0.3 to 0.6 km (0.2 to 0.4 mi) west of Cedar Plains Road, approximately 8.3 km (5.2 mi) west of the junction of U.S. Highway 31 and County Road 55 in Falkville. This population is located within a highly disturbed complex of limestone pavement barrens scattered in an actively utilized pasture and within the yards and fields of nearby homes. Well-lighted, open areas (PCE 2), with shallow soils and exposed limestone bedrock or gravel that are dominated by characteristic glade vegetation (PCE 1), are present within the unit.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats of invasive species into open glades and incompatible livestock grazing. Invasive species encroachment and continuous livestock grazing during the plant's reproductive cycle constitute ongoing threats to this site (Schotz 2009, pp. 25–26).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service,* 245 F.3d 434 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for Short's bladderpod, whorled sunflower, or fleshy-fruit gladecress. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for Short's bladderpod, whorled sunflower, or fleshy-fruit gladecress. These activities include, but are not limited to:

Short's Bladderpod

(1) Actions that would remove, severely alter, or inundate portions of bedrock formations or outcrops of calcareous limestones and interbedded shales or siltstones (geologic substrates). Actions that could remove or severely alter geologic substrates include, but are not limited to, construction of bridges, buildings, quarries, roads, railroad tracks, or interstate pipelines and associated structures. These actions could directly remove or result in alteration of geologic substrates due to blasting with explosive charges and removal or disturbance by heavy machinery. Construction of new dams or raising elevations of existing dams downstream of a critical habitat unit could inundate geologic substrates.

(2) Actions that would remove, severely alter, or increase erosion of soils. Such activities could include construction of bridges, buildings, quarries, roads, railroad tracks, or interstate pipelines and associated structures; maintenance of transportation rights-of-way; removal of woody vegetation; and reservoir management. Construction activities could directly remove soils during the course of grading and site preparation. Establishing a quarry would involve removal of the overburden, including soils, prior to excavating the geologic substrate for a quarry. Transportation right-of-way maintenance that involved grading or use of heavy equipment to remove vegetation could cause removal, alteration, or erosion of soils. Removal of woody vegetation, if done excessively, could result in soil erosion on the steeply sloped sites in most critical habitat units. Reservoir management that caused frequent changes in reservoir stage could lead to soil erosion, especially at lower elevations of hillside and bluff habitats. Removal or erosion of soils could lead to the loss or reduction of seed banks formed by Short's bladderpod. Soil alteration due to grading or other disturbance could cause soils to be overturned, resulting in burial of seed banks formed by Short's bladderpod.

(3) Actions that would result in removal of forest communities, promote development of woody vegetation with high stocking densities that cause excessive shading and a lack of forest gaps, or introduce invasive, nonnative plants into critical habitat. Such activities could include timber harvest that severely reduces or completely removes forest canopy; mechanical or chemical vegetation management for transportation right-of-way maintenance; and introduction of invasive, nonnative herbaceous and woody plants. Timber harvest that severely reduces or completely removes forest canopy cover would promote forest regeneration characterized by high stem densities and lack of a diverse age structure, which could cause excessive shading. Mechanical or chemical vegetation management for transportation right-of-way maintenance potentially could be beneficial for Short's bladderpod if well-planned and carefully executed. However, indiscriminate use of chemical or mechanical methods for vegetation control could cause complete removal of the forest canopy, which would promote regeneration characterized by high stem densities and lack of a diverse age structure, potentially leading to excessive shading. Introducing invasive, nonnative herbaceous and woody plants could lead to excessive shading and competition. Such species include, but are not limited to *Lonicera maackii* (bush honeysuckle), *L. japonica* (Japanese honeysuckle), *Ailanthus altissima* (tree-of-heaven), *Ligustrum vulgare* and *L. sinense* (privet), *Lespedeza cuneata* (sericea lespedeza), and *Lespedeza bicolor* (bicolor lespedeza). The effects of the activities described above would eventually prevent Short's bladderpod from receiving adequate light for growth and reproduction.

Whorled Sunflower

(1) Actions that would remove, severely alter, or increase erosion of soils. Such activities could include clearing, disking, plowing, and harvesting of row crop fields; site preparation, operation of heavy equipment, and construction and maintenance of log landings, loading decks, skid trails, and haul roads for silvicultural activities; and maintenance of transportation rights-of-way. These activities could result in the removal of soils, which would remove any whorled sunflower plants, rhizomes, or seeds present in the soil. These activities also could cause soil compaction, which could limit root and rhizome development or reduce water infiltration, or lead to increased soil erosion and loss of organic matter and nutrients.

(2) Actions that would promote encroachment of woody species into old fields, prairie remnants, or woodlands with herbaceous vegetation that is characteristic of moist prairie remnants. Such activities could include the

planting of forest stands with high stem densities; planting forested stream buffers; or neglecting to conduct periodic mechanical disturbance, herbicide application, or prescribed burning. Planting forest stands with high stem densities or planting forested stream buffers would eventually lead to development of a canopy that would prevent whorled sunflower from receiving adequate light for growth and reproduction. Neglecting to conduct periodic management in suitable habitat, such as mechanical disturbance, careful herbicide application, or prescribed burning, would lead to encroachment by shrubs or trees that would eventually prevent whorled sunflower from receiving adequate light for growth and reproduction.

(3) Actions that cause mortality of whorled sunflower plants or that disrupt growth and prevent individuals from producing flowers. Such activities could include indiscriminate herbicide application or mowing for transportation right-of-way maintenance, agriculture, or silviculture, or actions described above that cause removal of soils and plant parts they contain. Herbicide application or removal of soil and any plant parts contained therein could result in direct mortality of individual whorled sunflower plants. Poorly timed mowing could disrupt growth and prevent flower production. Either of these activities could permanently or temporarily reduce the number of compatible mates within a population, reducing the potential for viable achene production to occur.

Fleshy-Fruit Gladecress

(1) Actions that would remove, severely alter, or significantly reduce limestone outcrops. Such activities could include, but are not limited to, construction of interstate pipelines and associated structures that are regulated by the Federal Energy Regulatory Commission; U.S. Army Corps of Engineers-issued Clean Water Act section 404 and River and Harbors Act section 10 permits for wetland crossings for linear projects (pipelines, transmission lines, and roads); road development (expansions and improvements) funded by the Federal Highway Administration; and U.S. Department of Agriculture funding and technical assistance for conversion of glades and surroundings to pine plantations or for brush control programs involving herbicide applications. These actions could directly eliminate a site or alter the hydrology, open sunny aspect, and substrate conditions, reducing suitability of a location to a point that it no longer provides the environment necessary to sustain the species. In the case of some types of herbicide applications, the habitat may become unsuitable for germination and successful growth of seedlings. These activities would permanently alter the habitat that fleshy-fruit gladecress is dependent on to complete its life cycle.

(2) Actions that would significantly alter natural flora, including disturbance activities such as digging, disking, blading or construction work; introduction of nonnative species for erosion control along rights-of-way or in other areas; and a lack of management of nonnative or native woody species.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2013–0086, or by contacting the Tennessee Ecological Services Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this proposal, we have determined that no lands within the proposed designation of critical habitat for the whorled sunflower and fleshy-fruit gladecress are owned or managed by the Department of Defense. The Department of Defense owns or manages land, adjacent to Corps of Engineers reservoirs, where critical habitat is proposed for Short's bladderpod. However, we anticipate no impact on national security from designating this land as critical habitat. Consequently, the Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for the Short's bladderpod, whorled sunflower, nor fleshy-fruit gladecress, and the proposed designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from this proposed critical habitat designation. Accordingly, the Secretary does not propose to exercise her discretion to exclude any areas from the final designation based on other relevant impacts.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, and analyses. We have invited these peer reviewers to comment during this public comment period on our proposed designation of critical habitat for these species.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we will consider the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be both significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

Under the RFA, as amended, and following recent court decisions, Federal agencies are only required to

evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and not the potential impacts to indirectly affected entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service may certify that the proposed critical habitat rule will not have a significant economic impact on a substantial number of small entities.

We acknowledge, however, that in some cases, third-party proponents of the action subject to permitting or funding may participate in a section 7 consultation, and thus may be indirectly affected. We believe it is good policy to assess these impacts if we have sufficient data before us to complete the necessary analysis, whether or not this analysis is strictly required by the RFA. While this regulation does not directly regulate these entities, in our draft economic analysis we will conduct a brief evaluation of the potential number of third parties participating in consultations on an annual basis in order to ensure a more complete examination of the incremental effects of this proposed rule in the context of the RFA.

In conclusion, we believe that, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of critical habitat will only directly regulate Federal agencies which are not by definition small business entities. As such, certify that, if promulgated, this designation of critical habitat would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required. However, though not necessarily required by the RFA, in our draft economic analysis for this proposal we will consider and evaluate the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use, because: (1) Areas where critical habitat is being proposed for whorled sunflower and fleshy-fruit gladecress are not presently used for energy production, and (2) areas where critical habitat is being proposed for Short's bladderpod are not adversely affected as a result of hydropower generation by the Corps of Engineers. The authorized project purposes for Cheatham, Old Hickory, and Cordell Hull dams are navigation and hydropower. The overall reservoir system serves multiple purposes, including flood control, hydropower, navigation, recreation, water supply, and water quality. The preferred method of releasing water from these reservoirs is through hydropower turbines, and, to the extent possible, release schedules are developed to best meet peak power demands. However, storage capacity in these reservoirs constrains the upper limit at which reservoir stage can be maintained, sometimes requiring the Corps of Engineers to release water through spillways in addition to hydropower turbines, and limits the extent to which the lower elevations within proposed critical habitat units adjacent to these reservoirs are inundated or subjected to erosion due to stage fluctuation that could adversely modify features essential to the conservation of Short's bladderpod. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments. The majority of lands being proposed for critical habitat

designation are privately owned or owned by the Federal government, although Ashland City, Tennessee, and Frankfort, Kentucky, own small portions of lands proposed as critical habitat for Short's bladderpod. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate these issues as we conduct our economic analysis, and review and revise this assessment as warranted.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress in takings implications assessments. Based on the best available information, the takings implications assessments conclude that the designations of critical habitat for the Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress do not pose significant takings implications. However, we will further evaluate this issue as we develop our final designation, and review and revise this assessment as warranted.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Alabama, Georgia, Indiana, Kentucky, and Tennessee. The designation of critical habitat in areas currently occupied by Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress imposes no additional restrictions to those that would be put in place by the listing of the species and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We determined that there are no tribal lands occupied by Short's bladderpod, whorled sunflower, or fleshy-fruit gladecress at the time of listing that contain the features essential for conservation of the species, and no tribal lands unoccupied by these species that are essential for the conservation of the species. Therefore, we are not proposing to designate critical habitat for the Short's bladderpod, whorled sunflower, or fleshy-fruit gladecress on tribal lands.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2013–0086 and upon request from the Tennessee Ecological Services Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Tennessee and Alabama Ecological Services Field Offices.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.96 paragraph (a) as follows:

■ a. By adding an entry in alphabetical order under Family Asteraceae for ''*Helianthus verticillatus* (whorled sunflower)''; and

■ b. By adding entries in alphabetical order under Family Brassicaceae for ''*Leavenworthia crassa* (fleshy-fruit gladecress)'' and ''*Physaria globosa* (Short's bladderpod)''.

The additions read as follows:

§ 17.96 Critical habitat—plants.

* * * * *

(a) *Flowering plants.*

* * * * *

Family Asteraceae: *Helianthus verticillatus* (whorled sunflower)

(1) Critical habitat units are depicted for Cherokee County, Alabama; Floyd County, Georgia; and Madison and McNairy Counties, Tennessee, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of whorled sunflower consist of three components:

(i) Silt loam, silty clay loam, or fine sandy loam soils on land forms including broad uplands, depressions, stream terraces, and floodplains within the headwaters of the Coosa River in Alabama and Georgia and the East Fork Forked Deer and Tuscumbia rivers in Tennessee.

(ii) Sites in which forest canopy is absent, or where woody vegetation is present at sufficiently low densities to provide full or partial sunlight to whorled sunflower plants for most of the day, and which support vegetation characteristic of moist prairie communities. Invasive, nonnative plants must be absent or present in sufficiently low numbers to not inhibit growth or reproduction of whorled sunflower.

(iii) Occupied sites in which a sufficient number of compatible mates are present for outcrossing and production of viable achenes to occur.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of Bing Maps digital aerial photography supplied by the Harris Corporation, Earthstar Geographics LLC, and the Microsoft Corporation. Critical habitat units were then mapped using the USA Contiguous Albers Equal Area Projection with a NAD 83 datum. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Internet site at *http://www.fws.gov/cookeville,* at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0086, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

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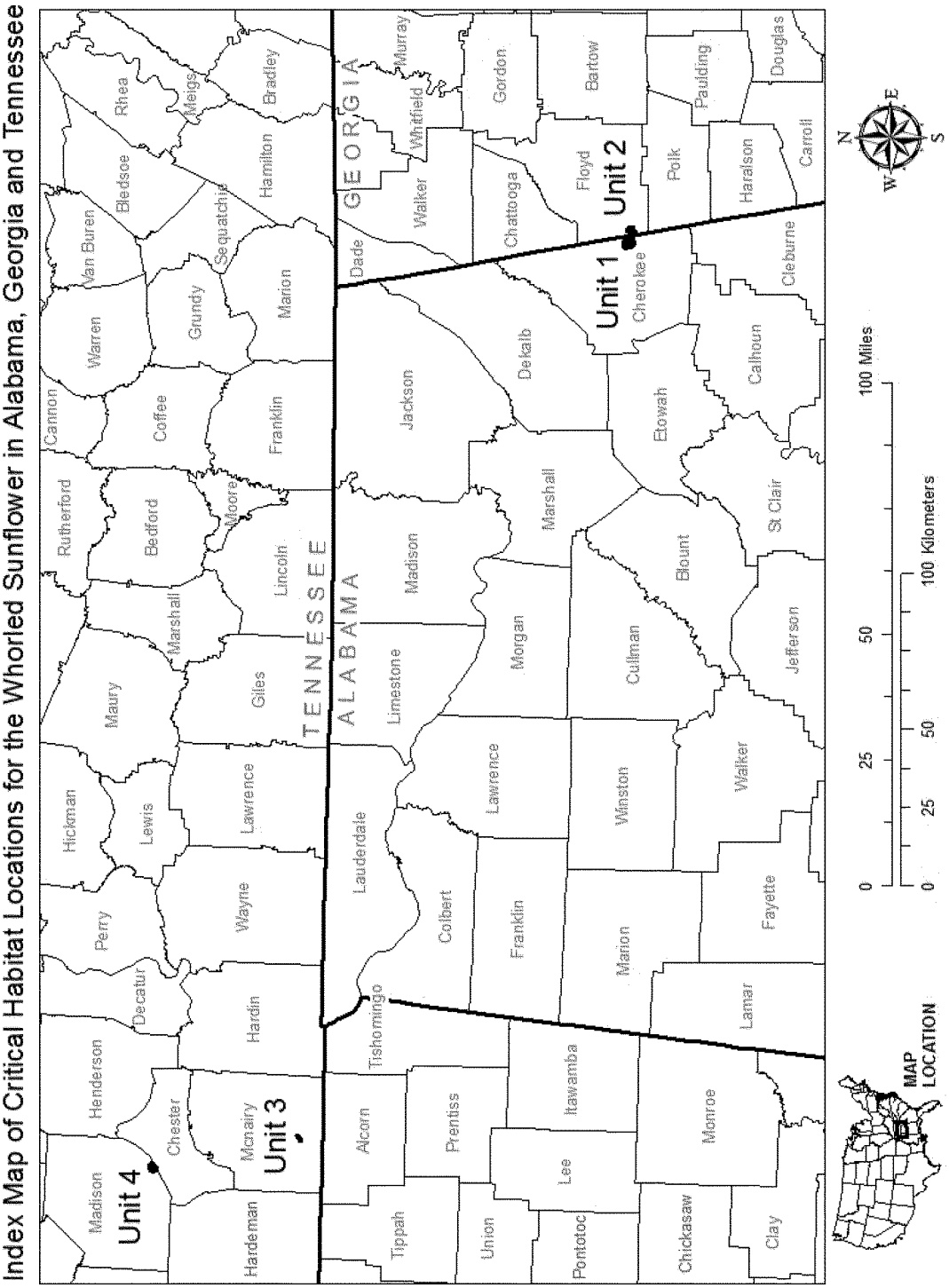
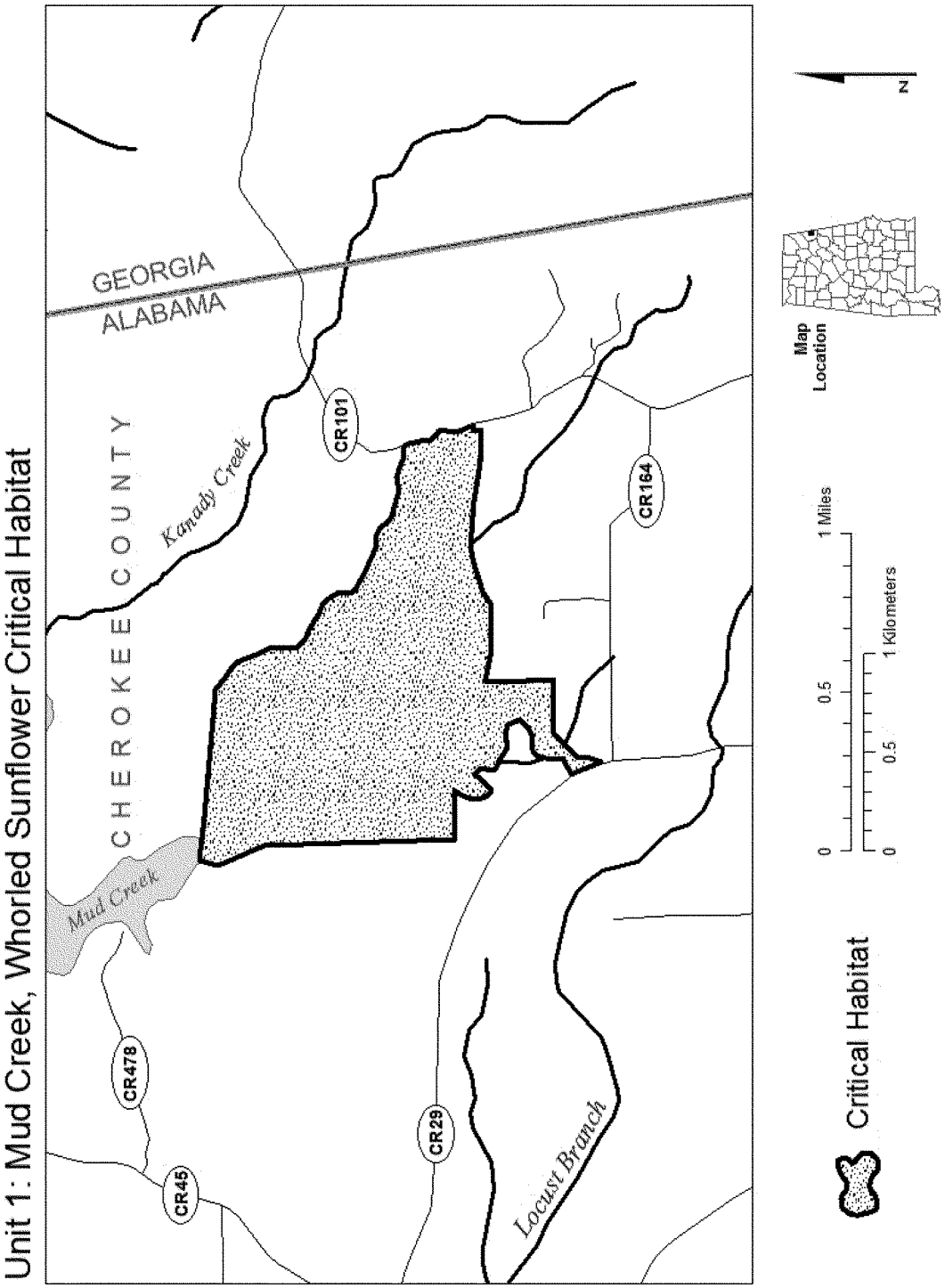
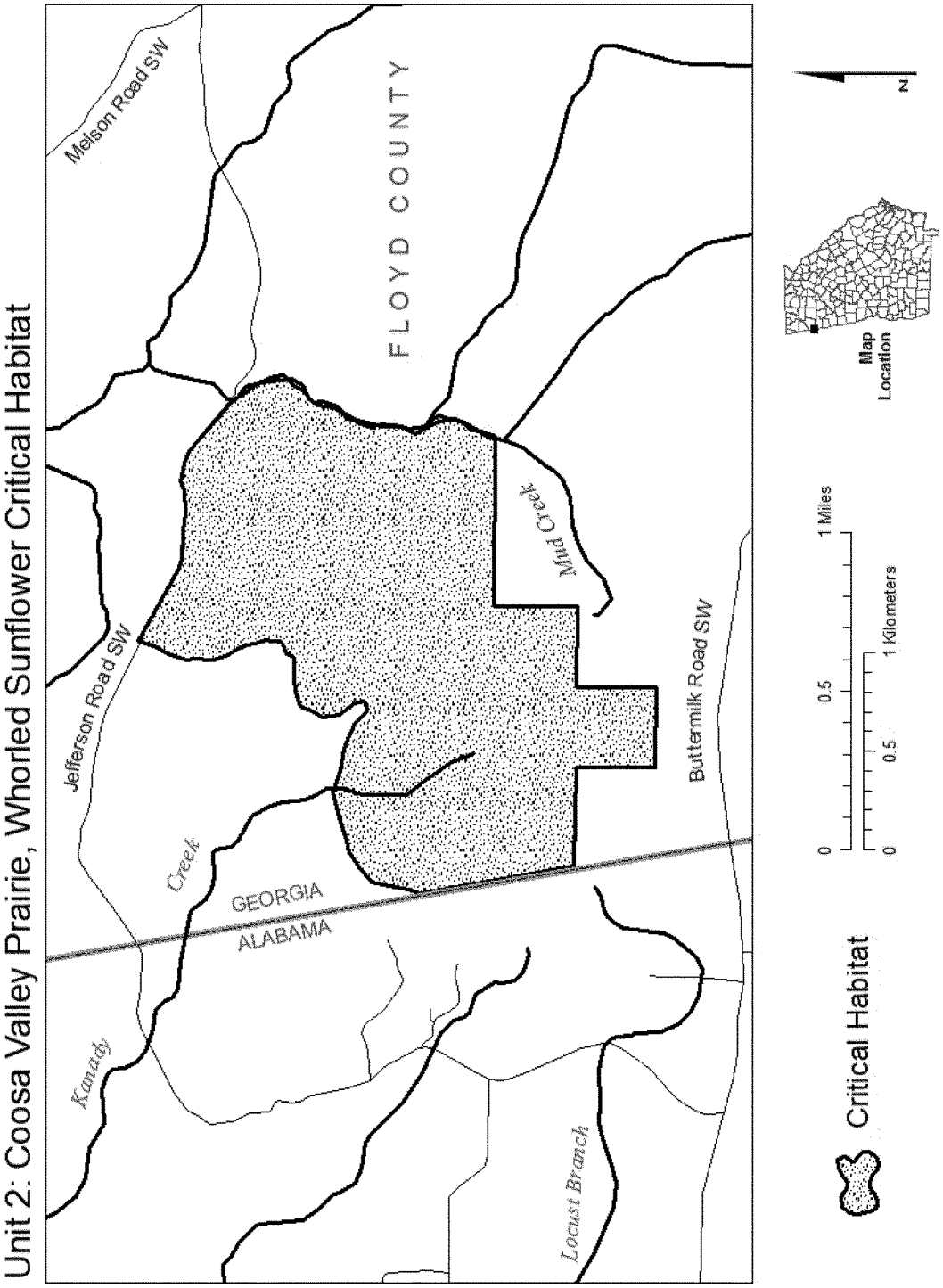
(5) Index map follows:



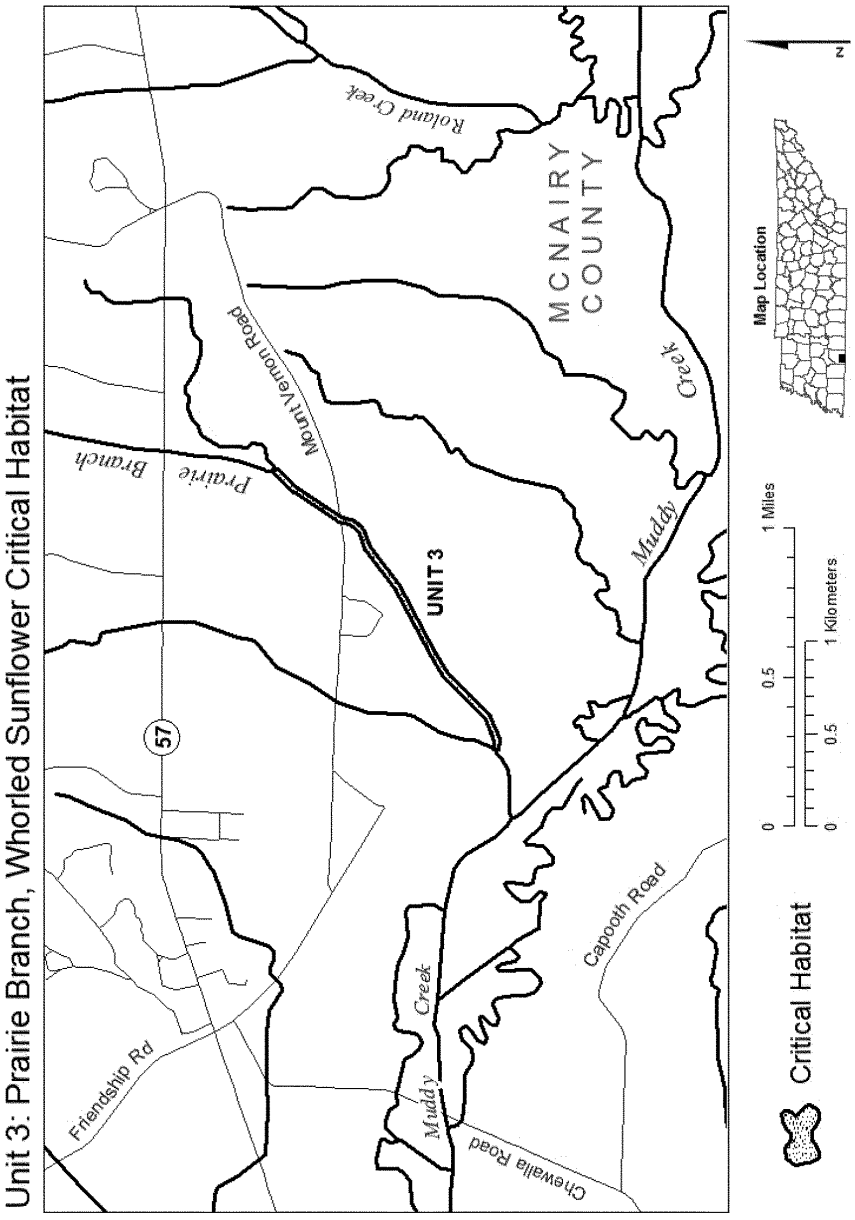
(6) Unit 1: Mud Creek, Cherokee County, Alabama, Map of Unit 1 follows:



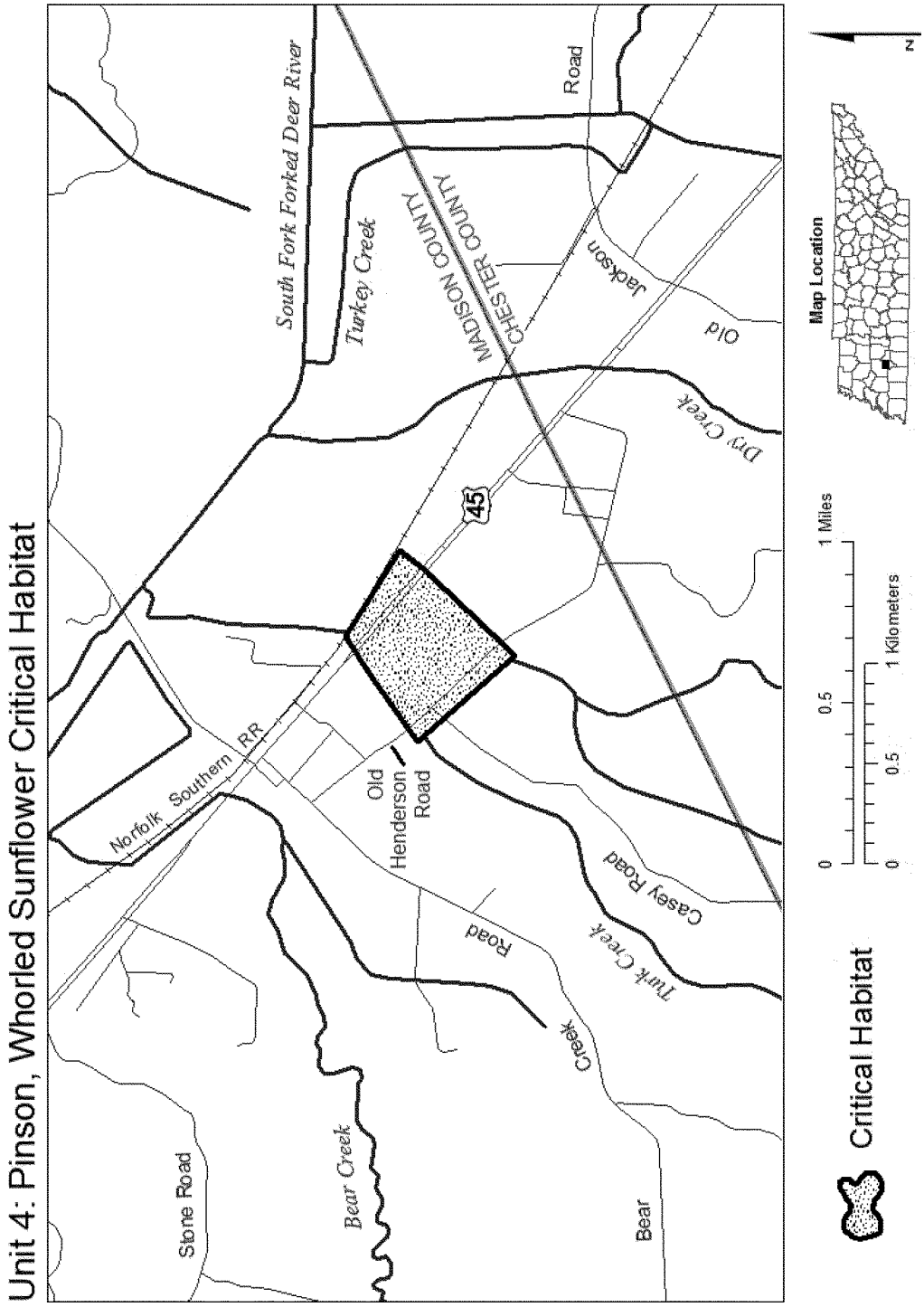
(7) Unit 2: Coosa Valley Prairie, Floyd County, Georgia. Map of Unit 2 follows:



(8) Unit 3: Prairie Branch, McNairy County, Tennessee. Map of Unit 3 follows:



(9) Unit 4: Pinson, Madison County, Tennessee. Map of Unit 4 follows:



* * * * *

Family Brassicaceae: *Leavenworthia crassa* (fleshy-fruit gladecress)

(1) Critical habitat units are depicted for Lawrence and Morgan Counties, Alabama, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of fleshy-fruit gladecress consist of three components:

(i) Shallow-soiled, open areas with exposed limestone bedrock or gravel that are dominated by herbaceous vegetation characteristic of glade communities.

(ii) Open or well-lighted areas of exposed limestone bedrock or gravel that ensure fleshy-fruit gladecress plants remain unshaded for a significant portion of the day.

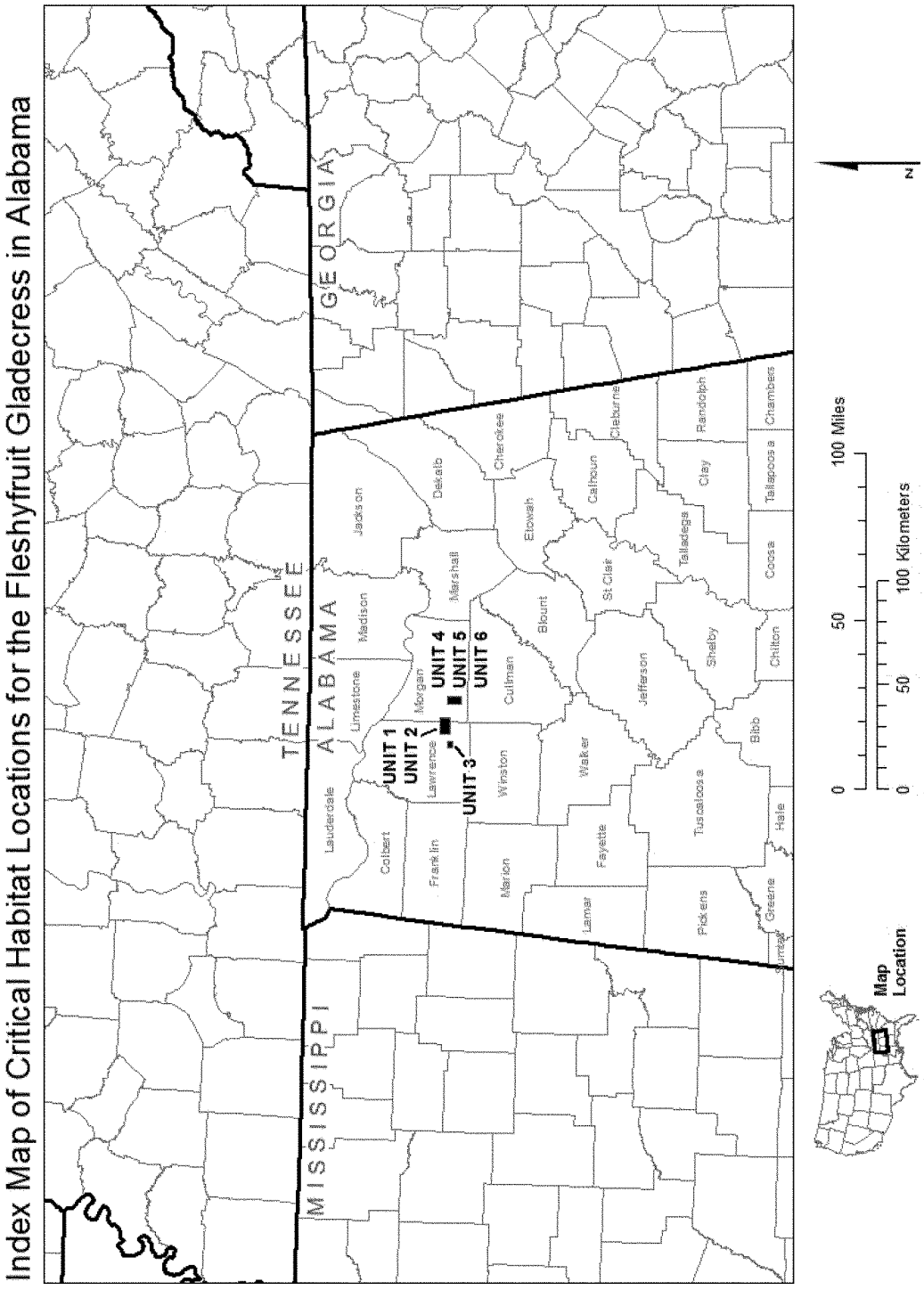
(iii) Glade habitat that is protected from both native and invasive, nonnative plants to minimize

competition and shading of fleshy-fruit gladecress.

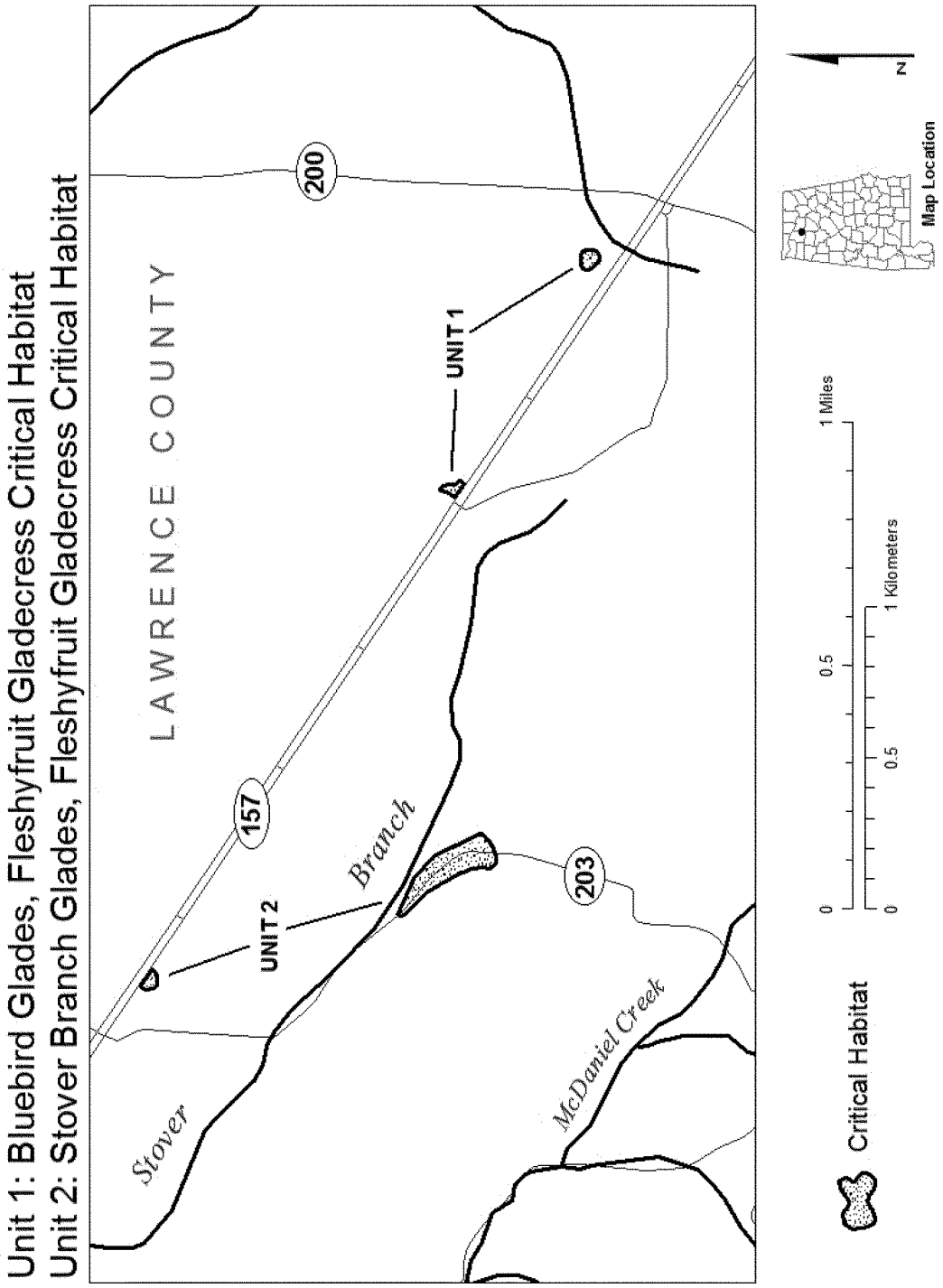
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of Bing Maps digital aerial photography supplied by the Harris Corporation, Earthstar Geographics LLC, and the Microsoft Corporation. Critical habitat units were then mapped using the USA Contiguous Albers Equal Area Projection with a NAD 83 datum. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Internet site at *http://www.fws.gov/cookeville,* at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0086, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:

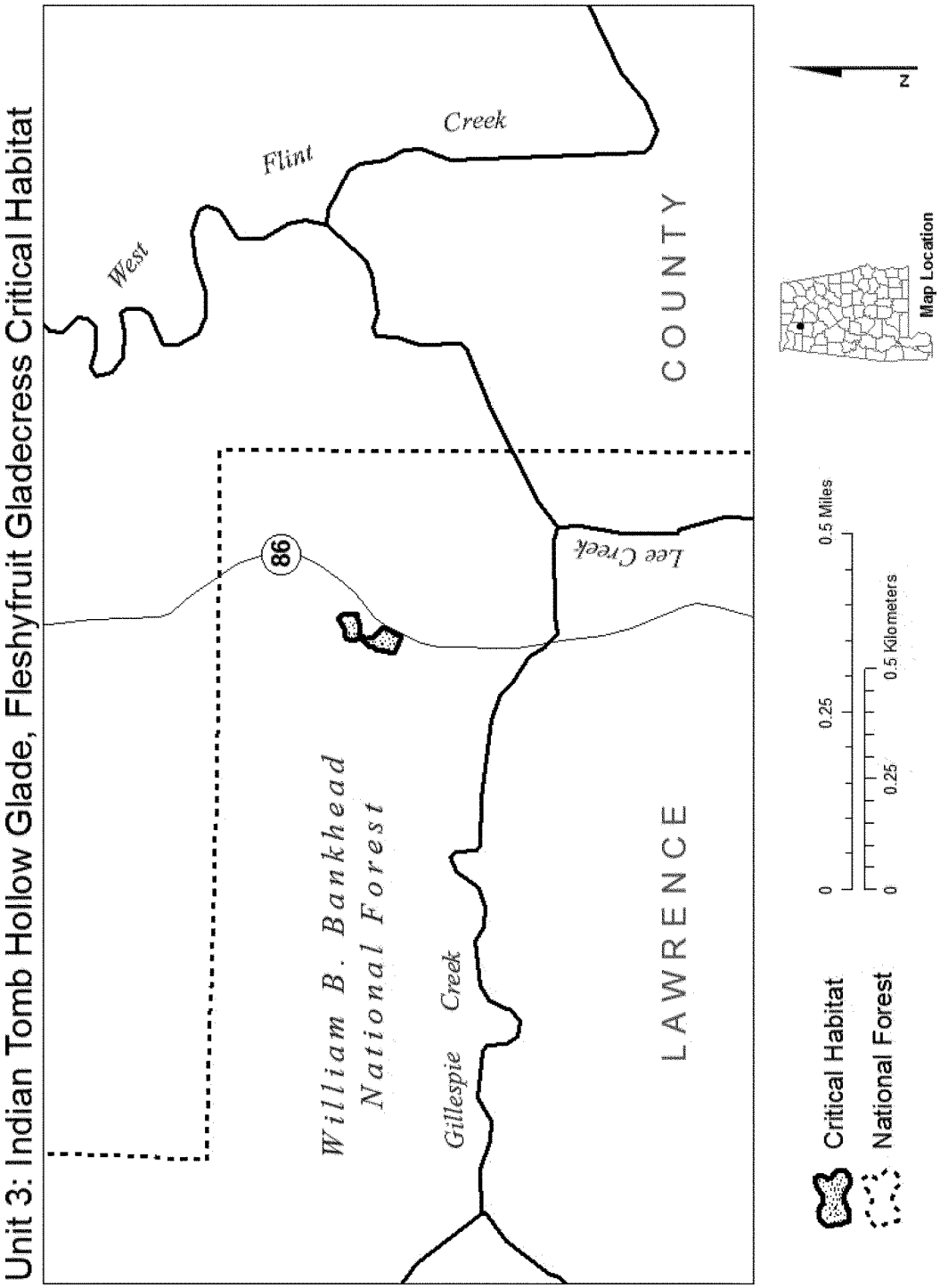


(6) Unit 1: Bluebird Glades, Lawrence County, Alabama. Map of Units 1 and 2 follows:

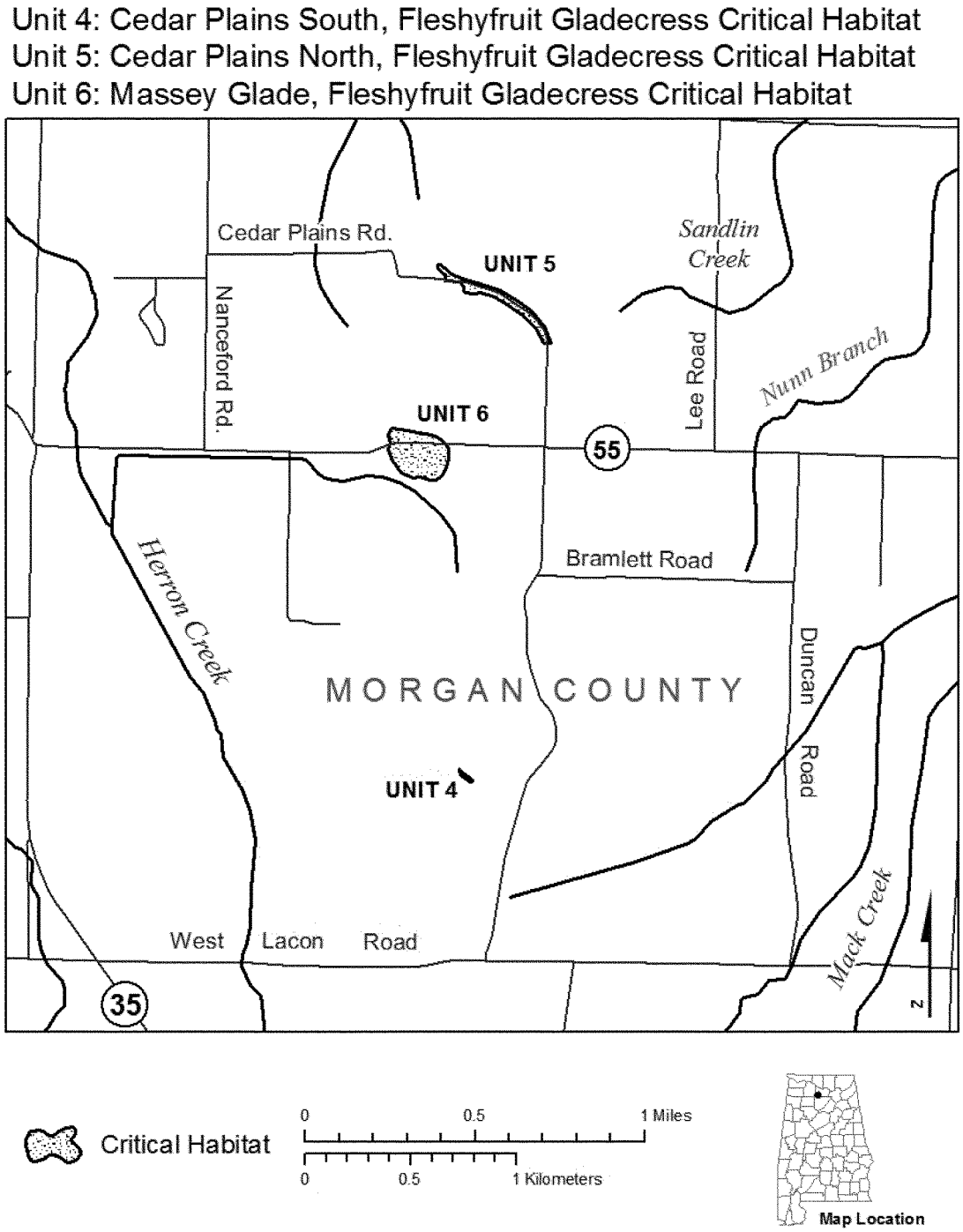


(7) Unit 2: Stover Branch Glades, Lawrence County, Alabama. Map of Unit 2 is provided at paragraph (6) of this entry.

(8) Unit 3: Indian Tomb Hollow Glade, Lawrence County, Alabama. Map of Unit 3 follows:



(9) Unit 4: Cedar Plains South, Morgan County, Alabama. Map of Units 4, 5, and 6 follows:



(10) Unit 5: Cedar Plains North, Morgan County, Alabama. Map of Unit 5 is provided at paragraph (8) of this entry.

(11) Unit 6: Massey Glade, Morgan County, Alabama. Map of Unit 6 is provided at paragraph (8) of this entry.

* * * * *

Family Brassicaceae: *Physaria globosa* (Short's bladderpod)

(1) Critical habitat units are depicted for Posey County, Indiana; Clark, Franklin, and Woodford Counties, Kentucky; and Cheatham, Davidson, Dickson, Jackson, Montgomery, Smith, and Trousdale Counties, Tennessee, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of Short's bladderpod consist of three components:

(i) Bedrock formations and outcrops of calcareous limestone, sometimes with interbedded shale or siltstone, in close proximity to the mainstem or tributaries of the Kentucky and Cumberland rivers. These outcrop sites or areas of suitable bedrock geology should be located on steeply sloped hillsides or bluffs, typically on south- to west-facing aspects.

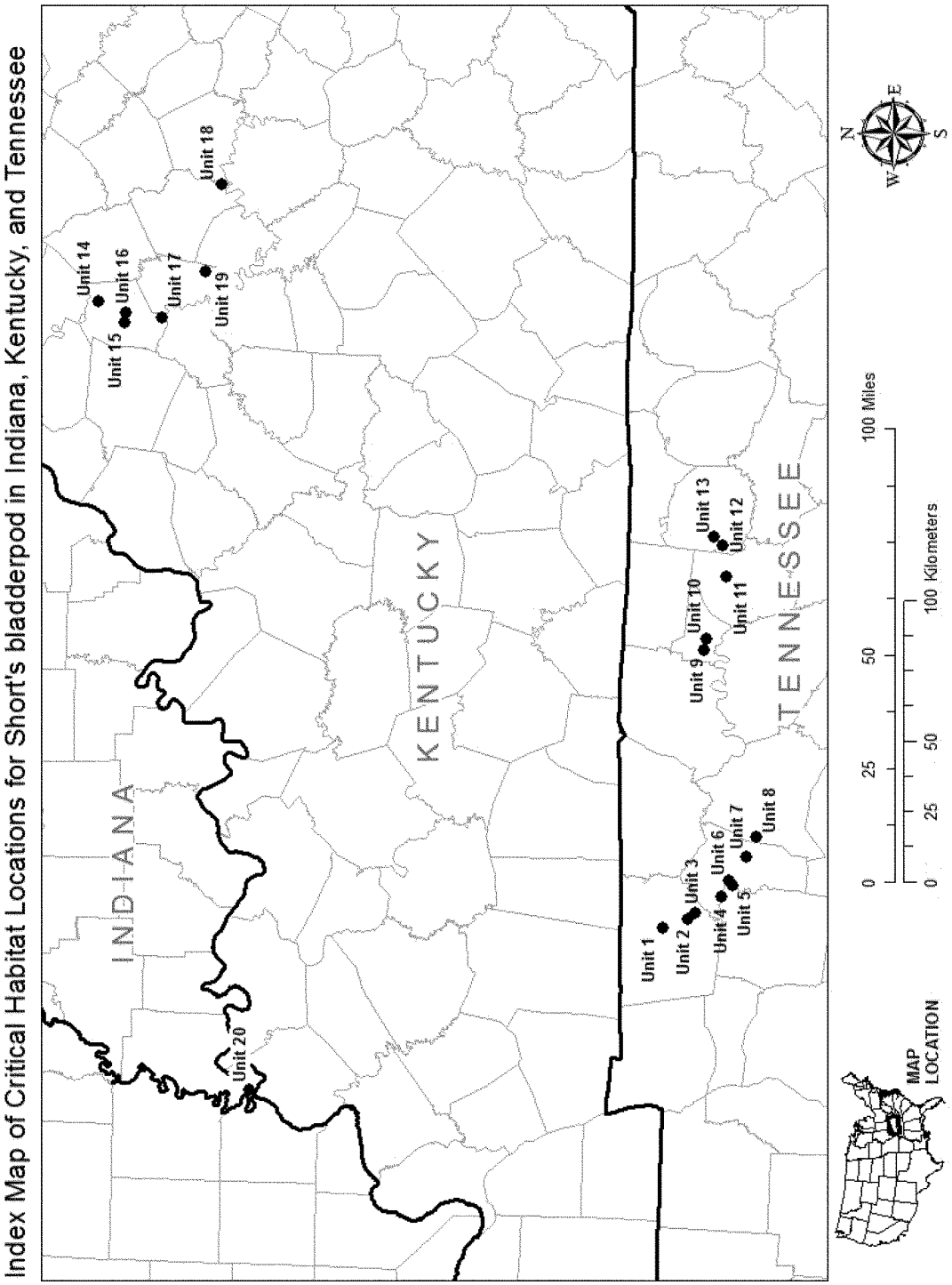
(ii) Shallow or rocky, well-drained soils formed from the weathering of underlying calcareous bedrock formations, which are undisturbed or subjected to minimal disturbance, so as to retain habitat for ground-nesting pollinators and potential for maintenance of a soil seed bank.

(iii) Forest communities with low levels of canopy closure or openings in the canopy to provide adequate sunlight for individual and population growth. Invasive, nonnative plants must be absent or present in sufficiently low numbers to not inhibit growth or reproduction of Short's bladderpod.

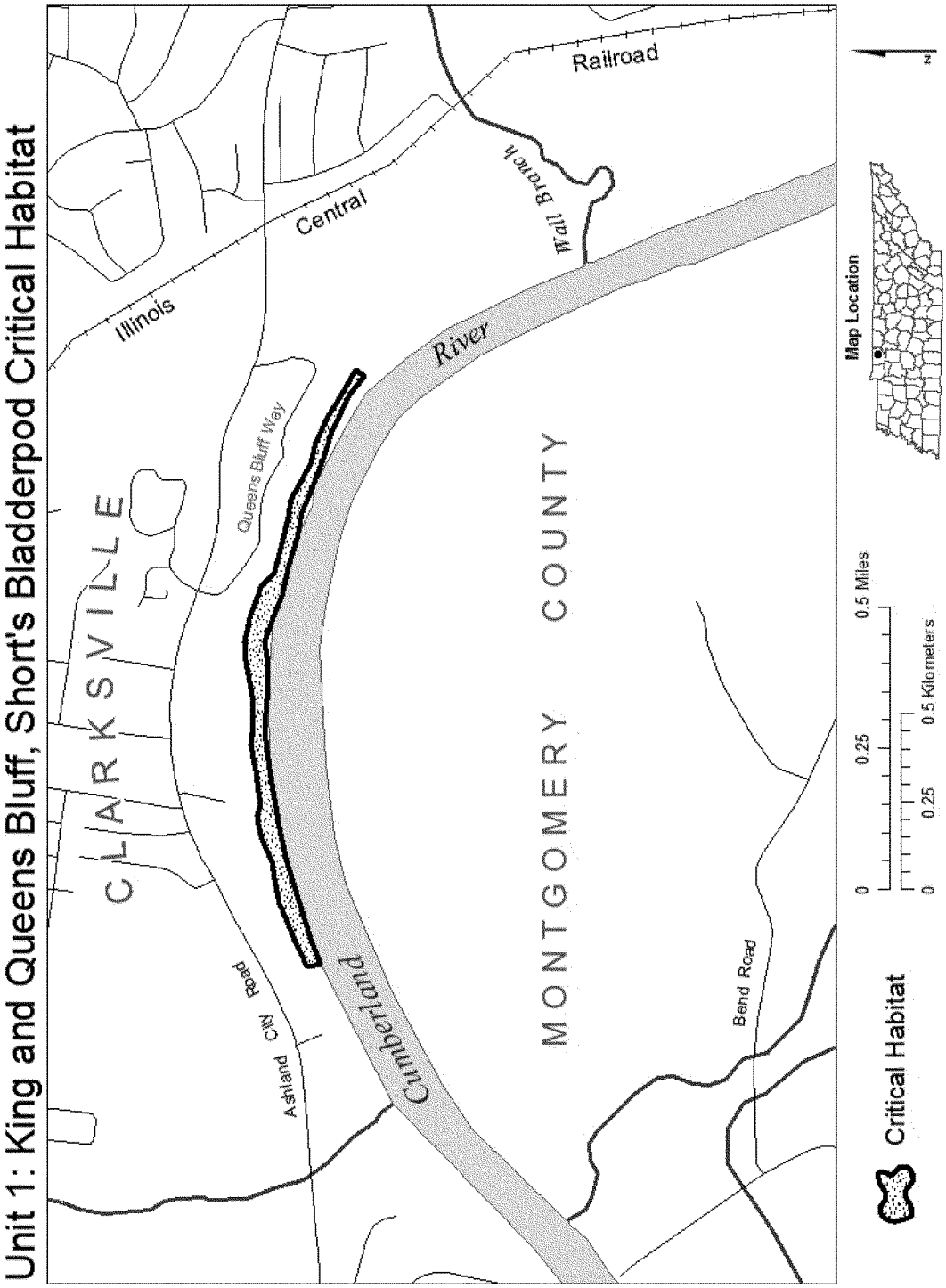
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of Bing Maps digital aerial photography supplied by the Harris Corporation, Earthstar Geographics LLC, and the Microsoft Corporation. Critical habitat units were then mapped using the USA Contiguous Albers Equal Area Projection with a NAD 83 datum. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Internet site at *http://www.fws.gov/cookeville,* at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0086, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

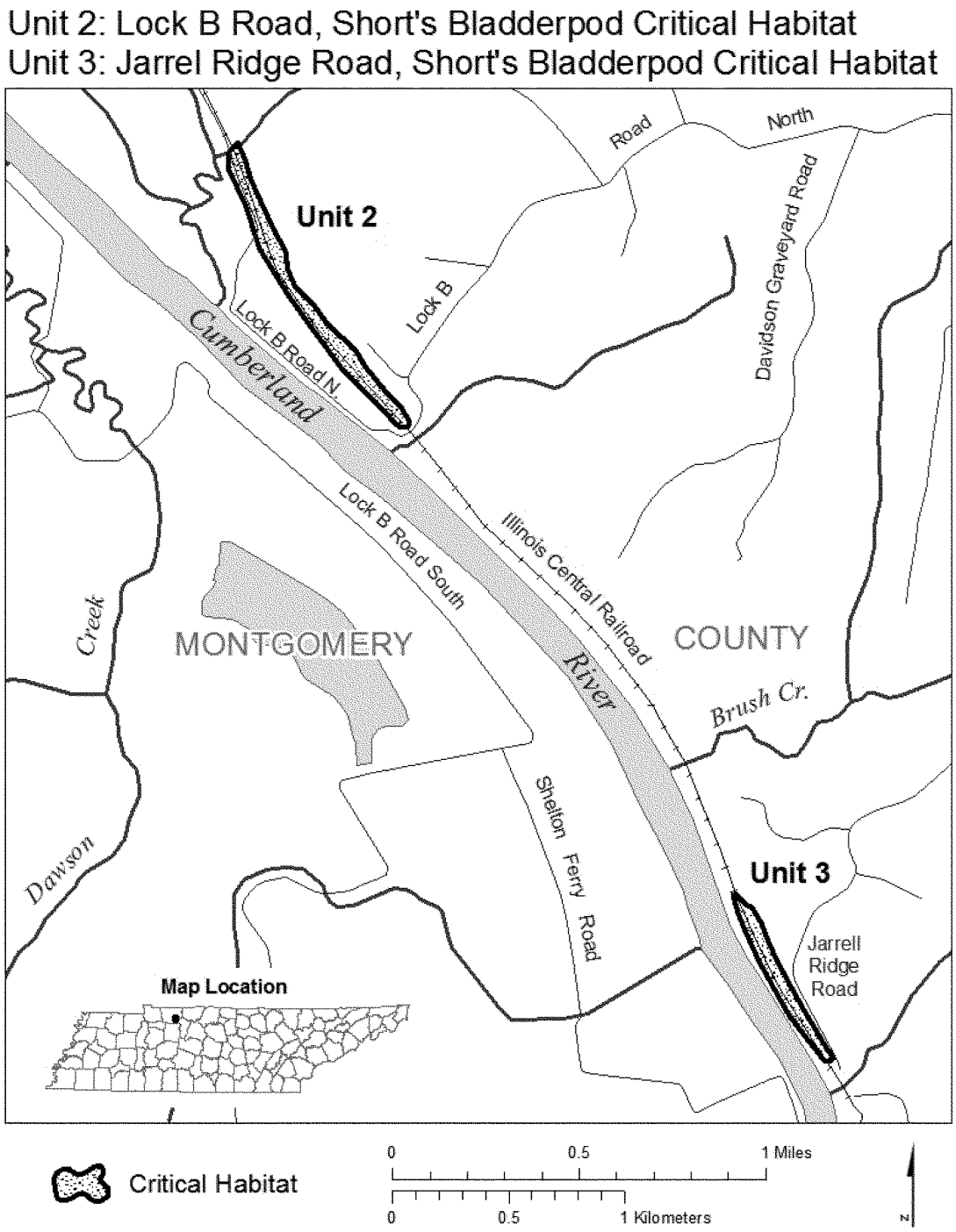
(5) Index map follows:



(6) Unit 1: Kings and Queens Bluff, Montgomery County, Tennessee. Map of Unit 1 follows:

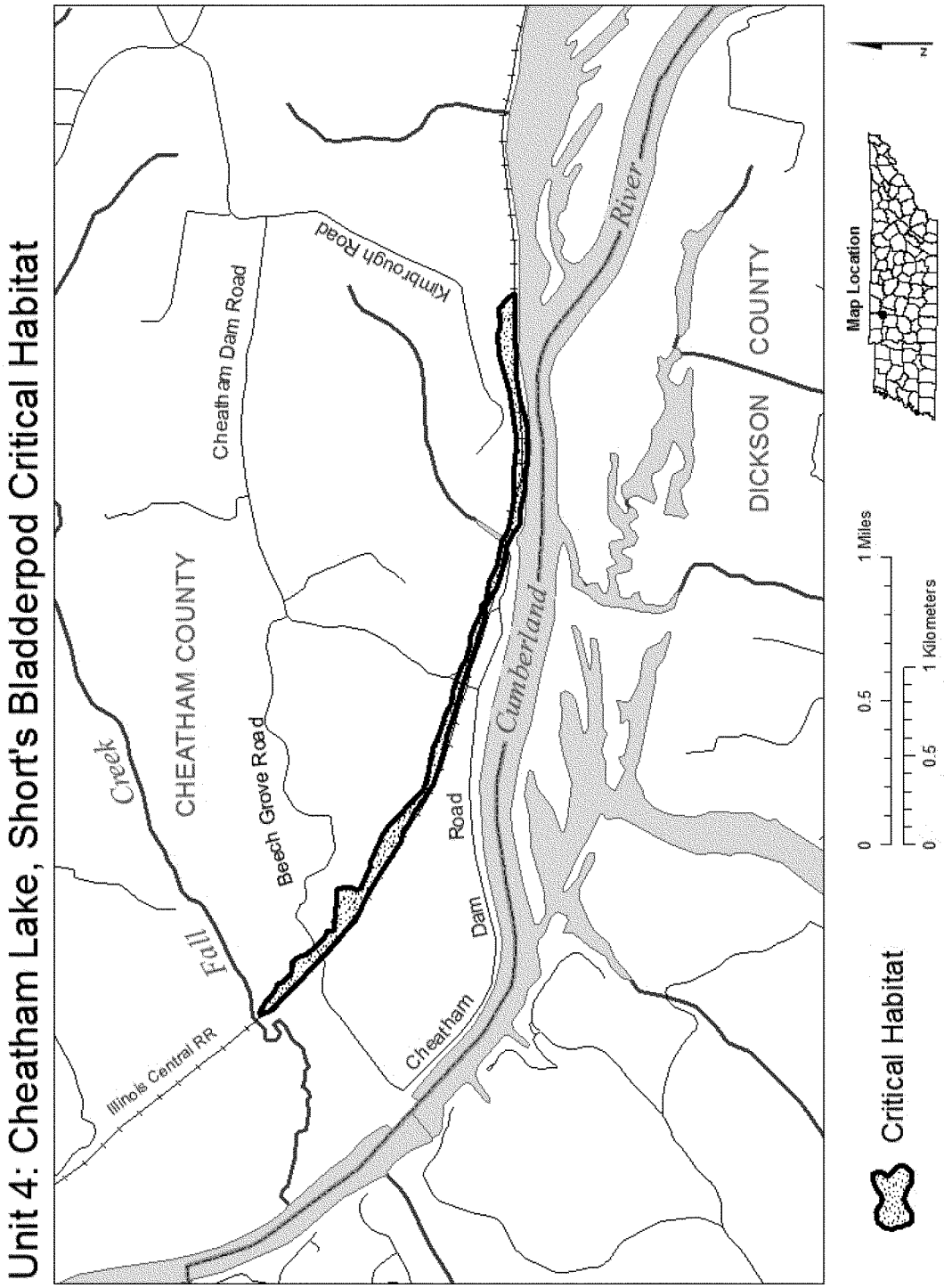


(7) Unit 2: Lock B Road, Montgomery County, Tennessee. Map of Units 2 and 3 follows:

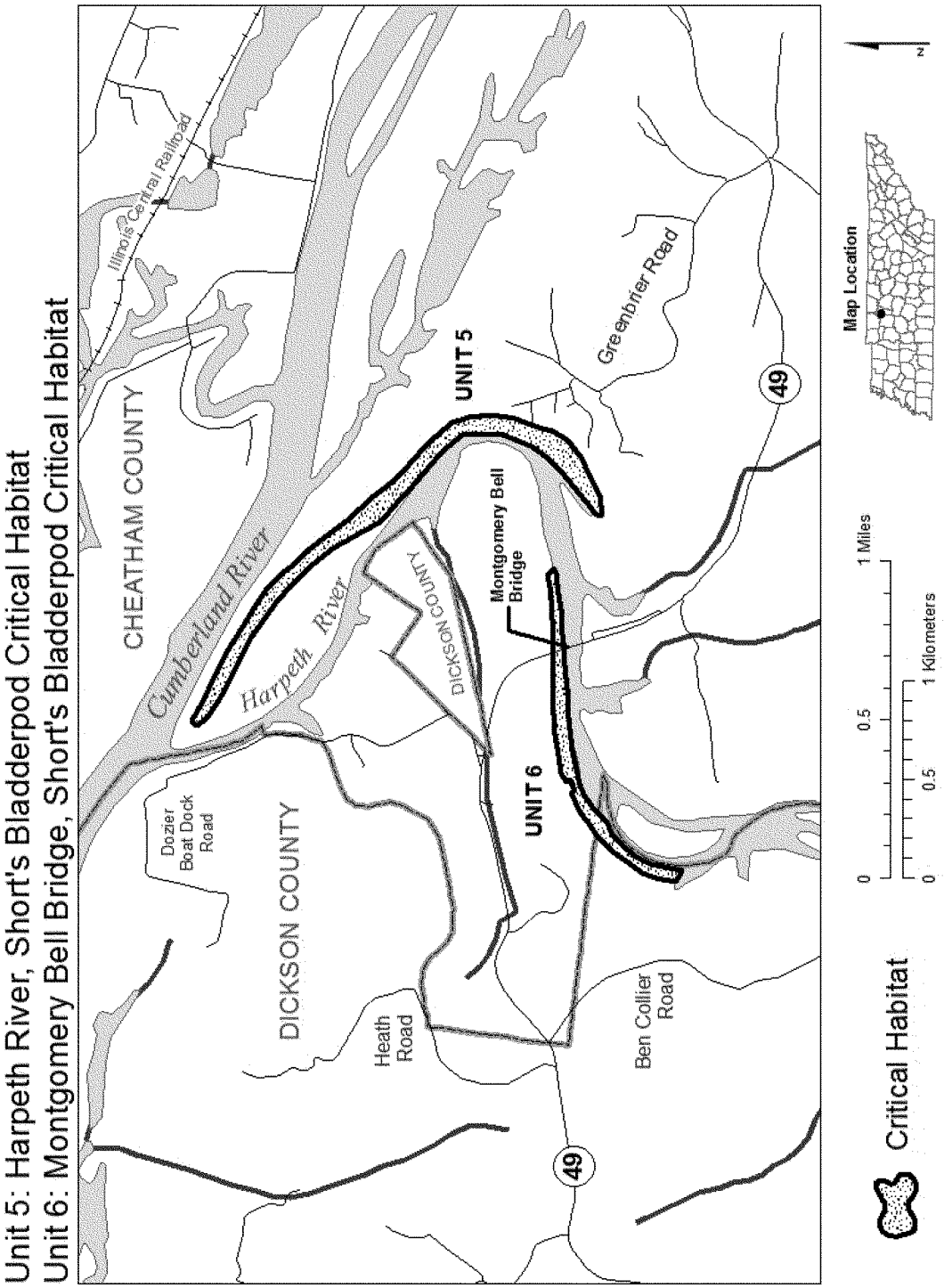


(8) Unit 3: Jarrel Ridge Road, Montgomery County, Tennessee. Map of Unit 3 is provided at paragraph (7) of this entry.

(9) Unit 4: Cheatham Lake, Cheatham County, Tennessee. Map of Unit 4 follows:

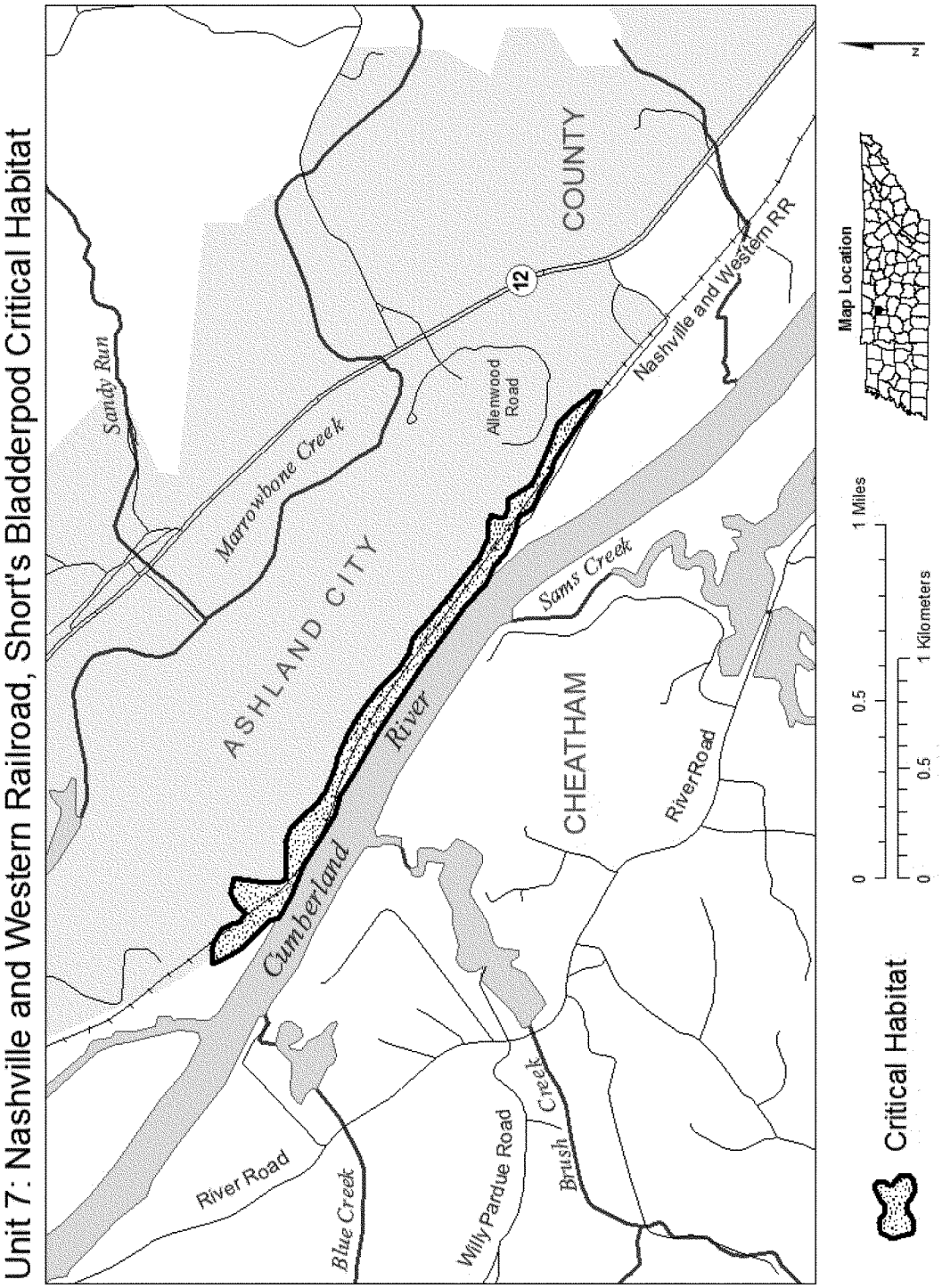


(10) Unit 5: Harpeth River, Cheatham County, Tennessee. Map of Units 5 and 6 follows:

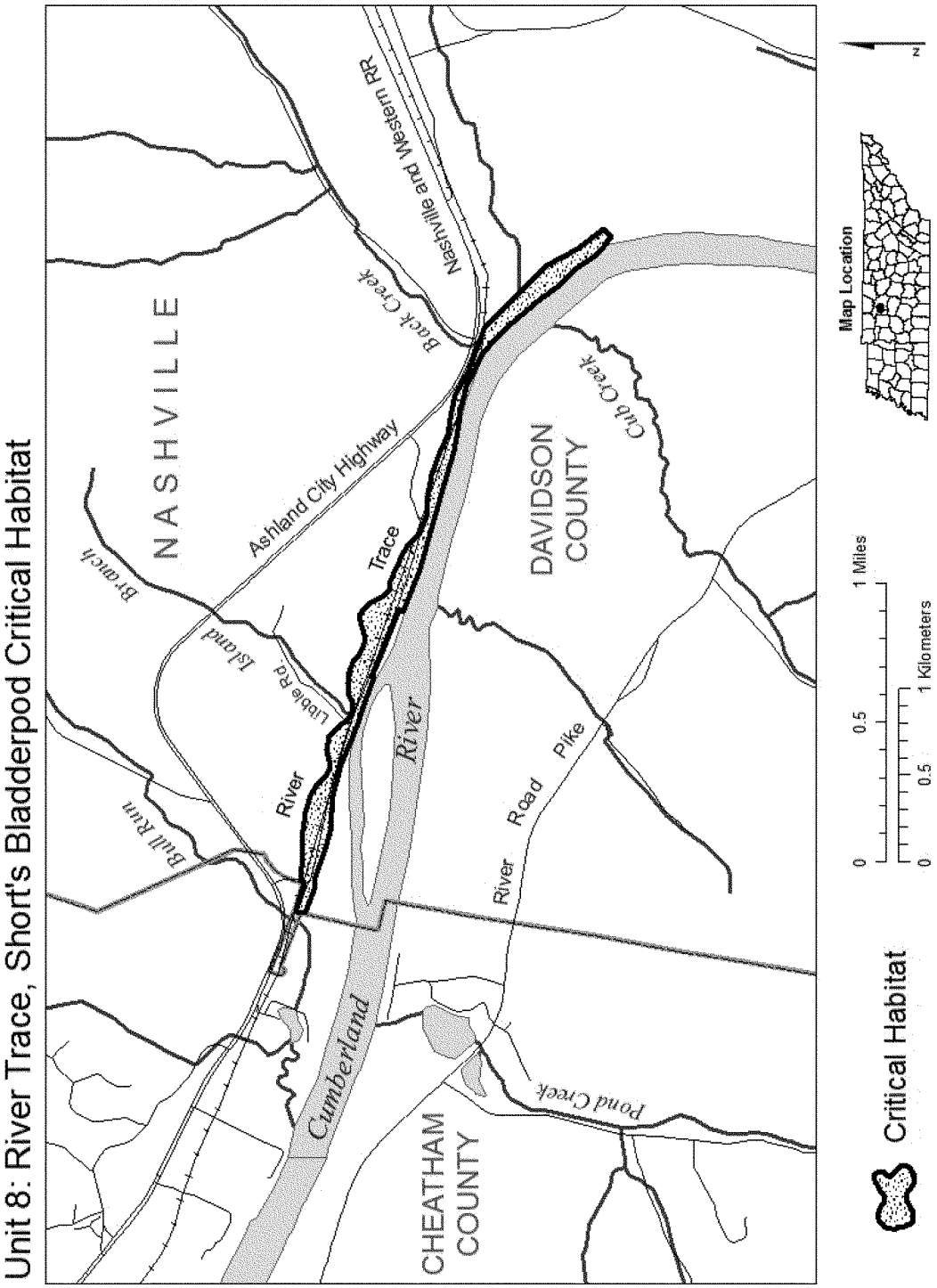


(11) Unit 6: Montgomery Bell Bridge, Cheatham and Dickson Counties, Tennessee. Map of Unit 6 is provided at paragraph (10) of this entry.

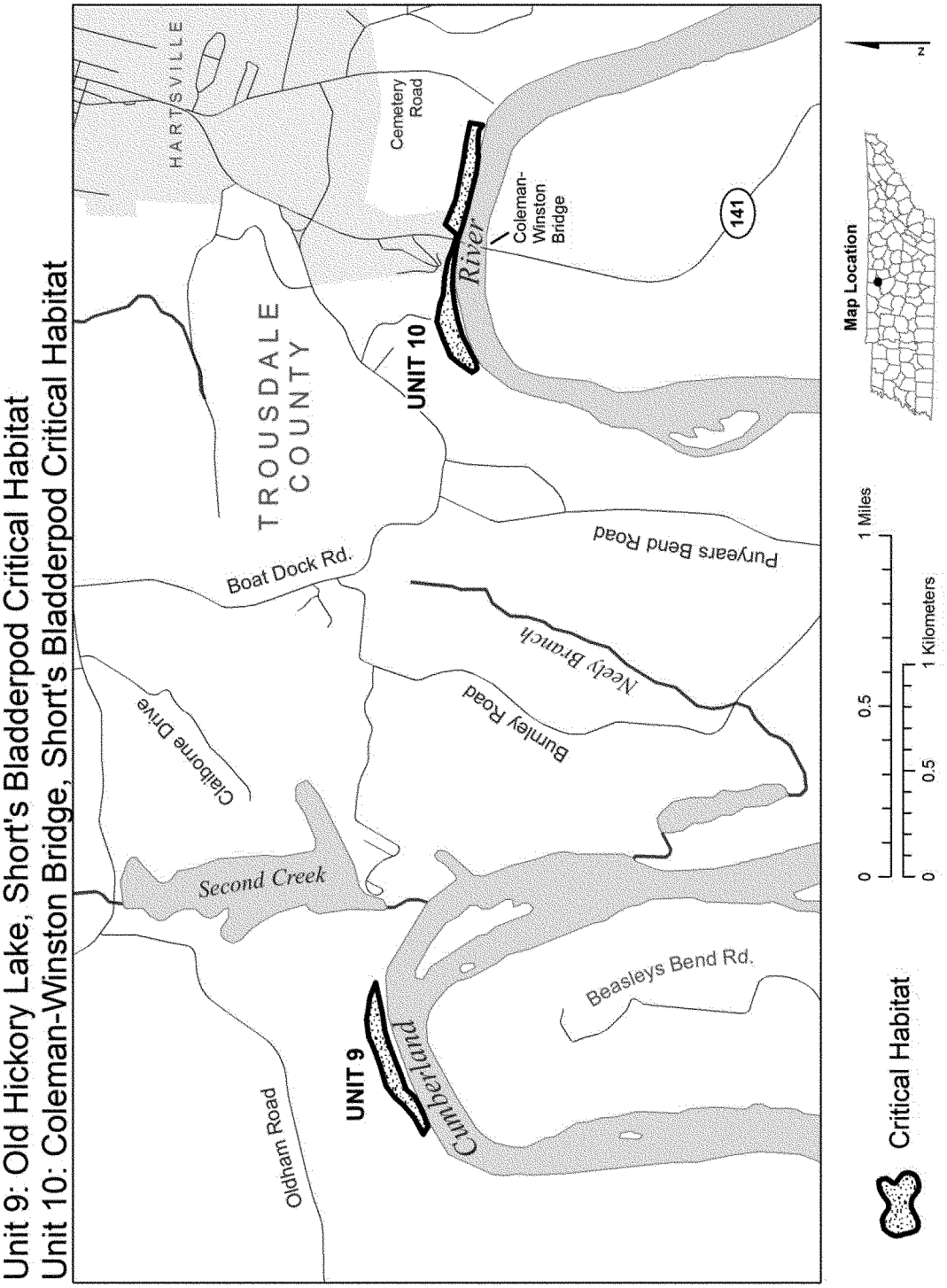
(12) Unit 7: Nashville and Western Railroad, Cheatham County, Tennessee.
Map of Unit 7 follows:



(13) Unit 8: River Trace, Cheatham and Davidson Counties, Tennessee. Map of Unit 8 follows:

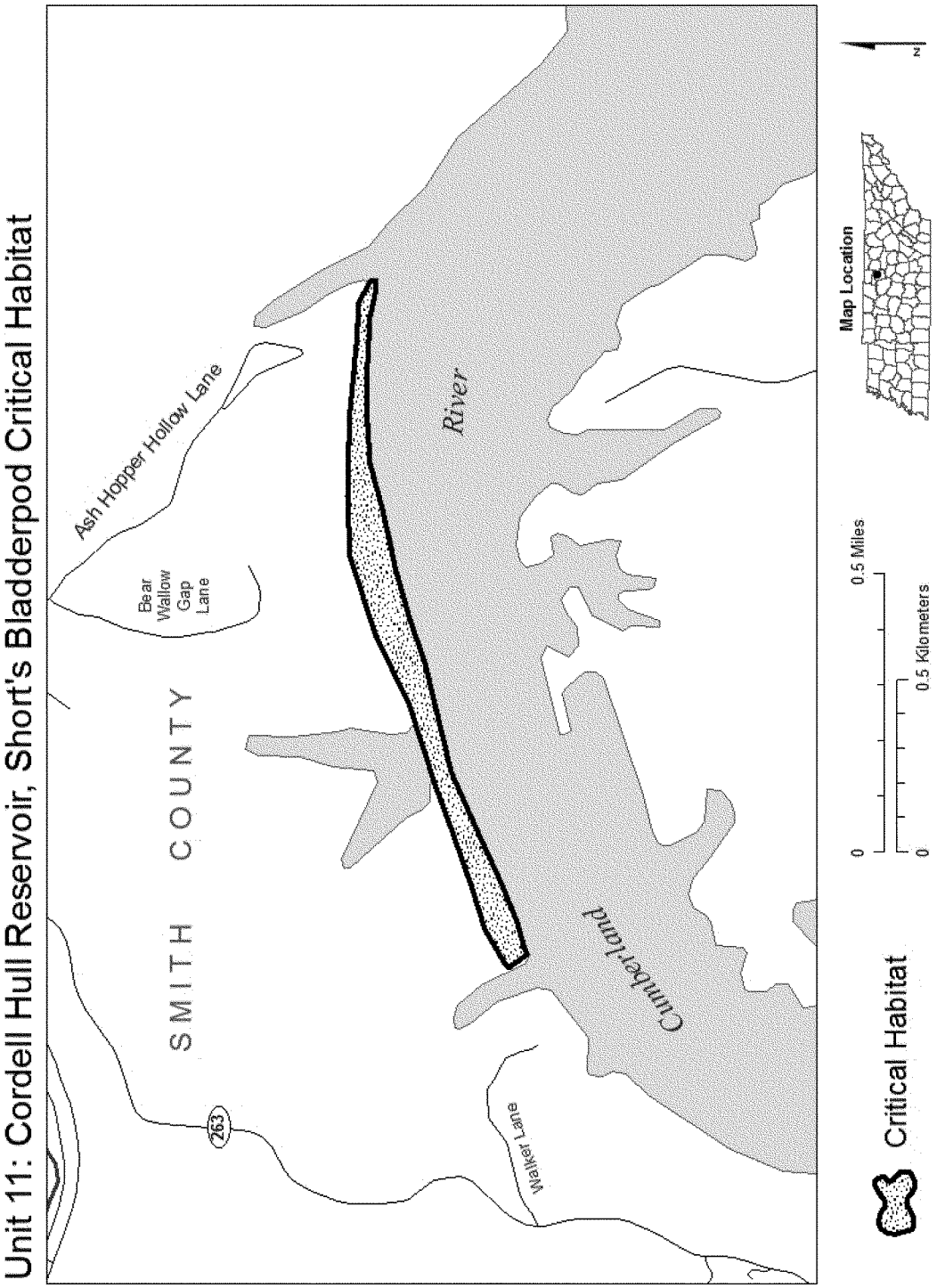


(14) Unit 9: Old Hickory Lake, Trousdale County, Tennessee. Map of Units 9 and 10 follows:

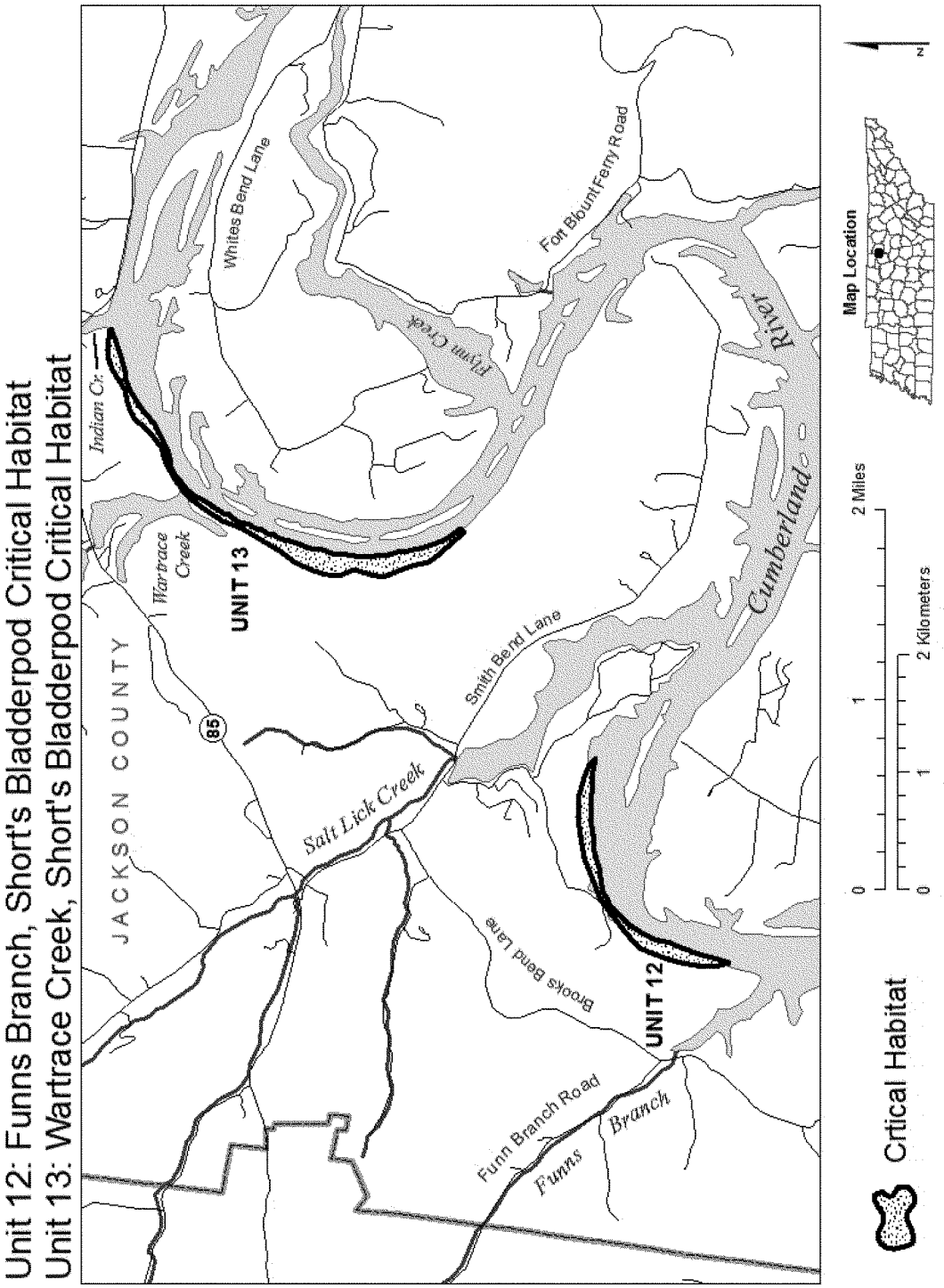


(15) Unit 10: Coleman-Winston Bridge, Trousdale County, Tennessee. Map of Unit 10 is provided at paragraph (14) of this entry.

(16) Unit 11: Cordell Hull Reservoir, Smith County, Tennessee. Map of Unit 11 follows:

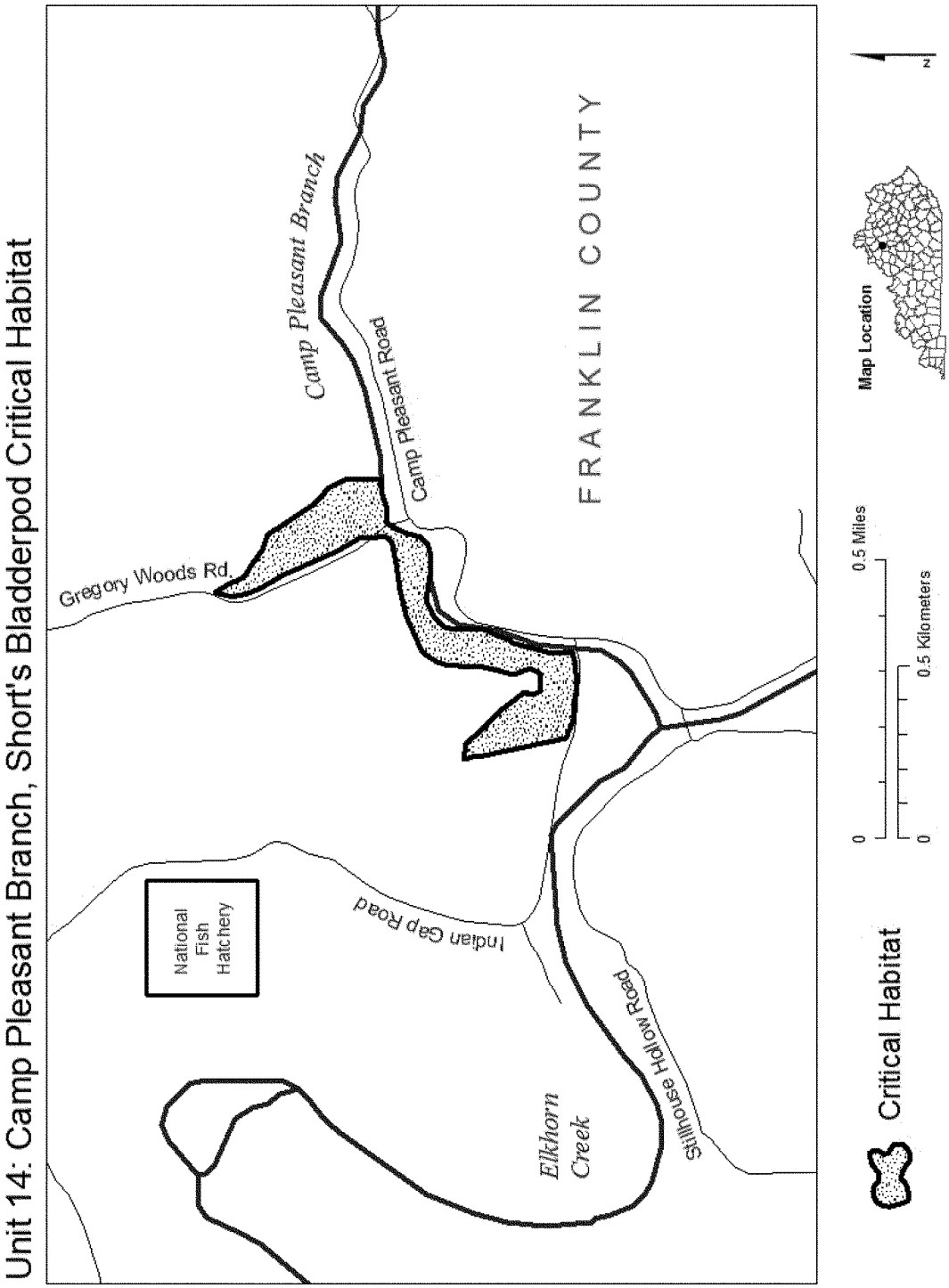


(17) Unit 12: Funns Branch, Jackson County, Tennessee. Map of Units 12 and 13 follows:

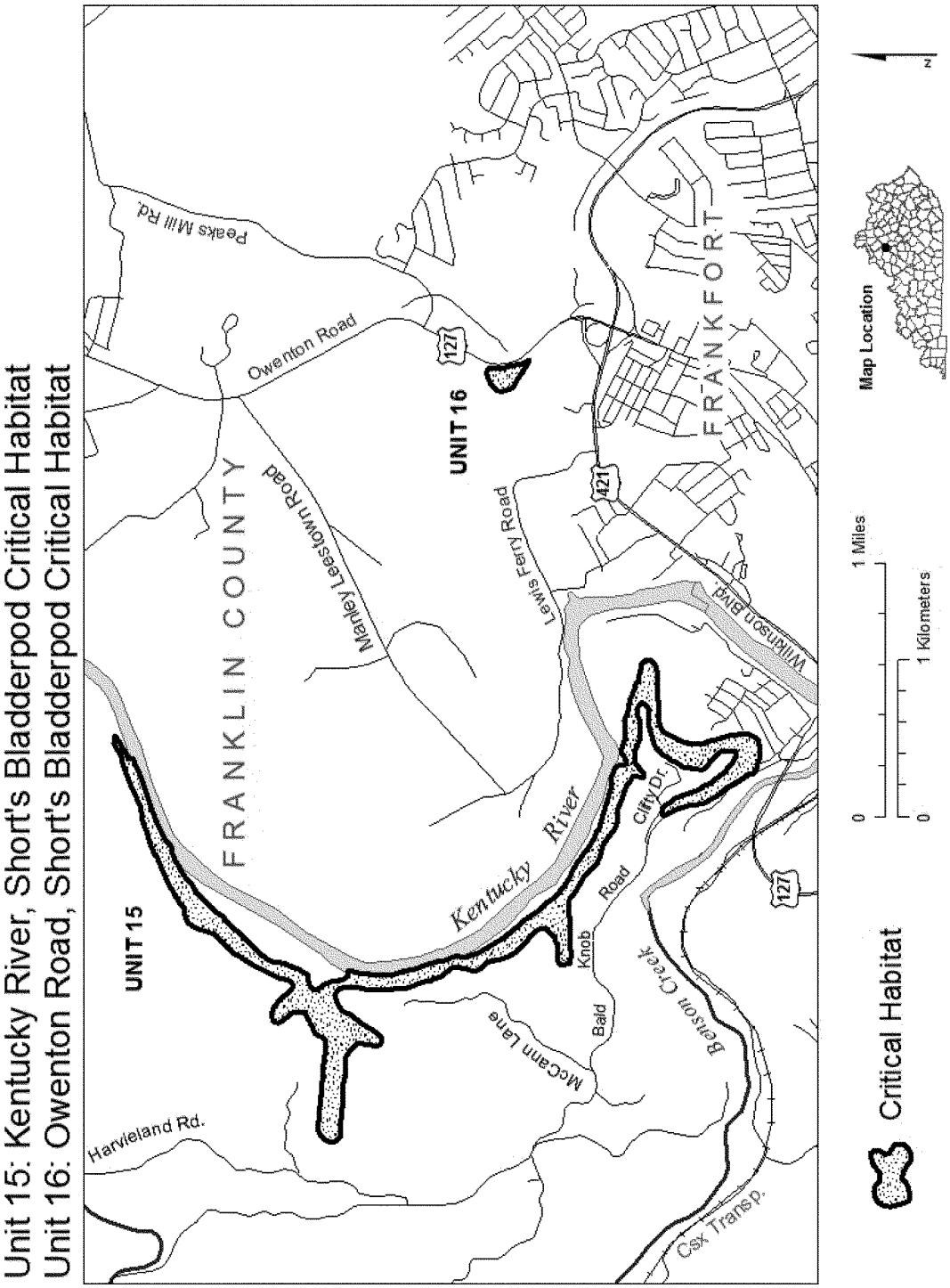


(18) Unit 13: Wartrace Creek, Jackson County, Tennessee. Map of Unit 13 is provided at paragraph (17) of this entry.

(19) Unit 14: Camp Pleasant Branch, Franklin County, Kentucky. Map of Unit 14 follows:

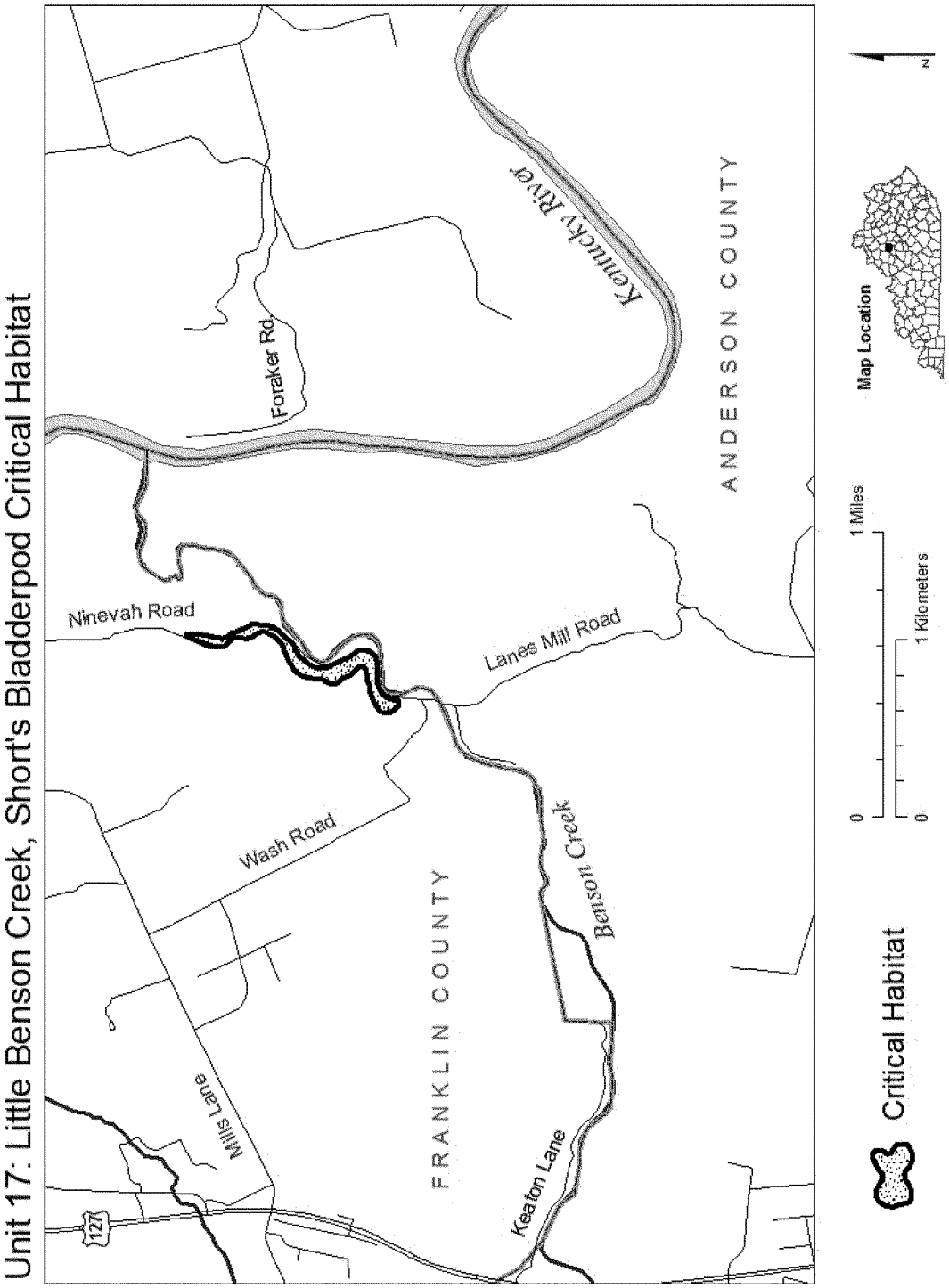


(20) Unit 15: Kentucky River, Franklin County, Kentucky. Map of Units 15 and 16 follows:

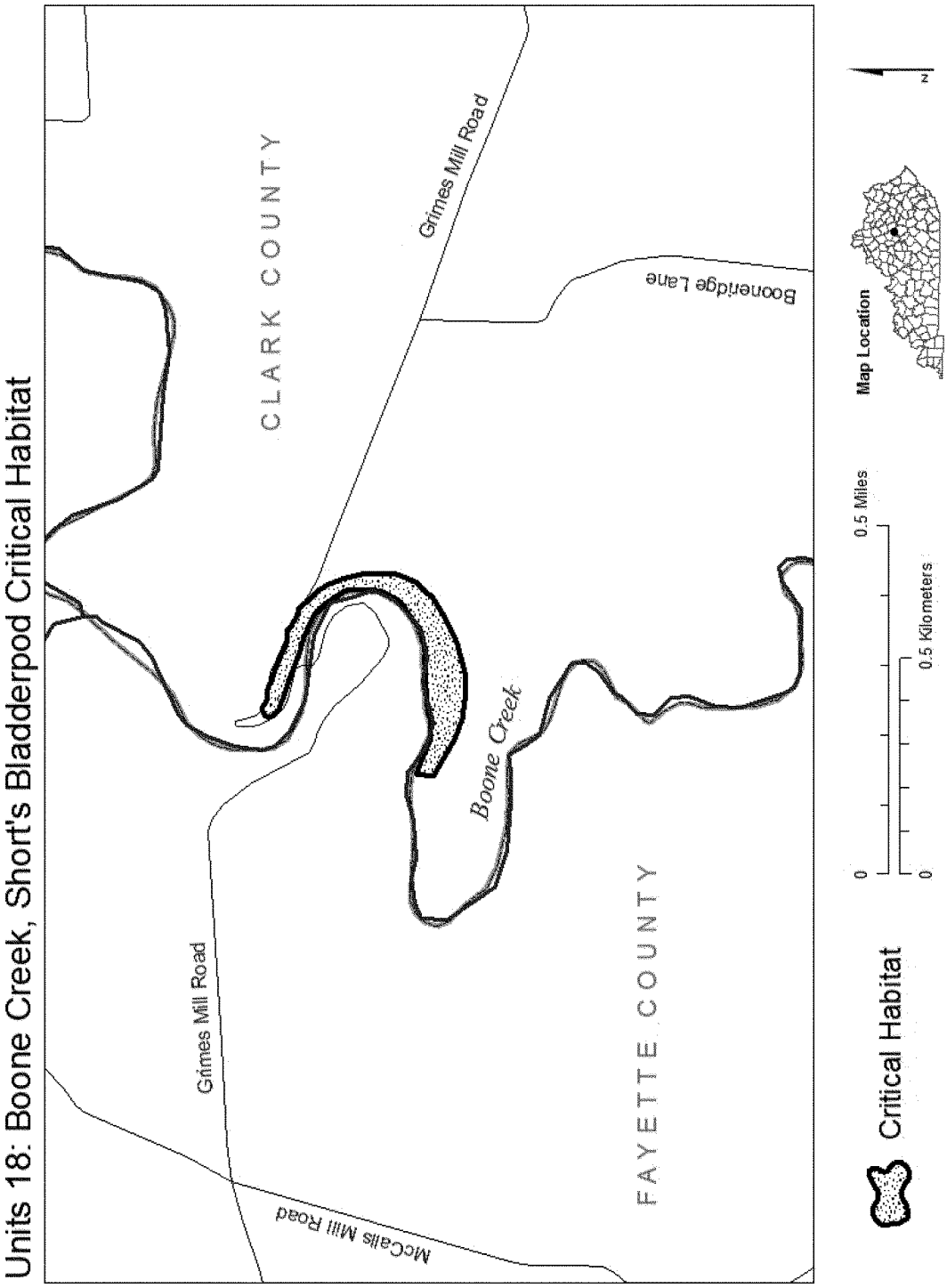


(21) Unit 16: Owenton Road, Franklin County, Kentucky. Map of Unit 16 is provided at paragraph (20) of this entry.

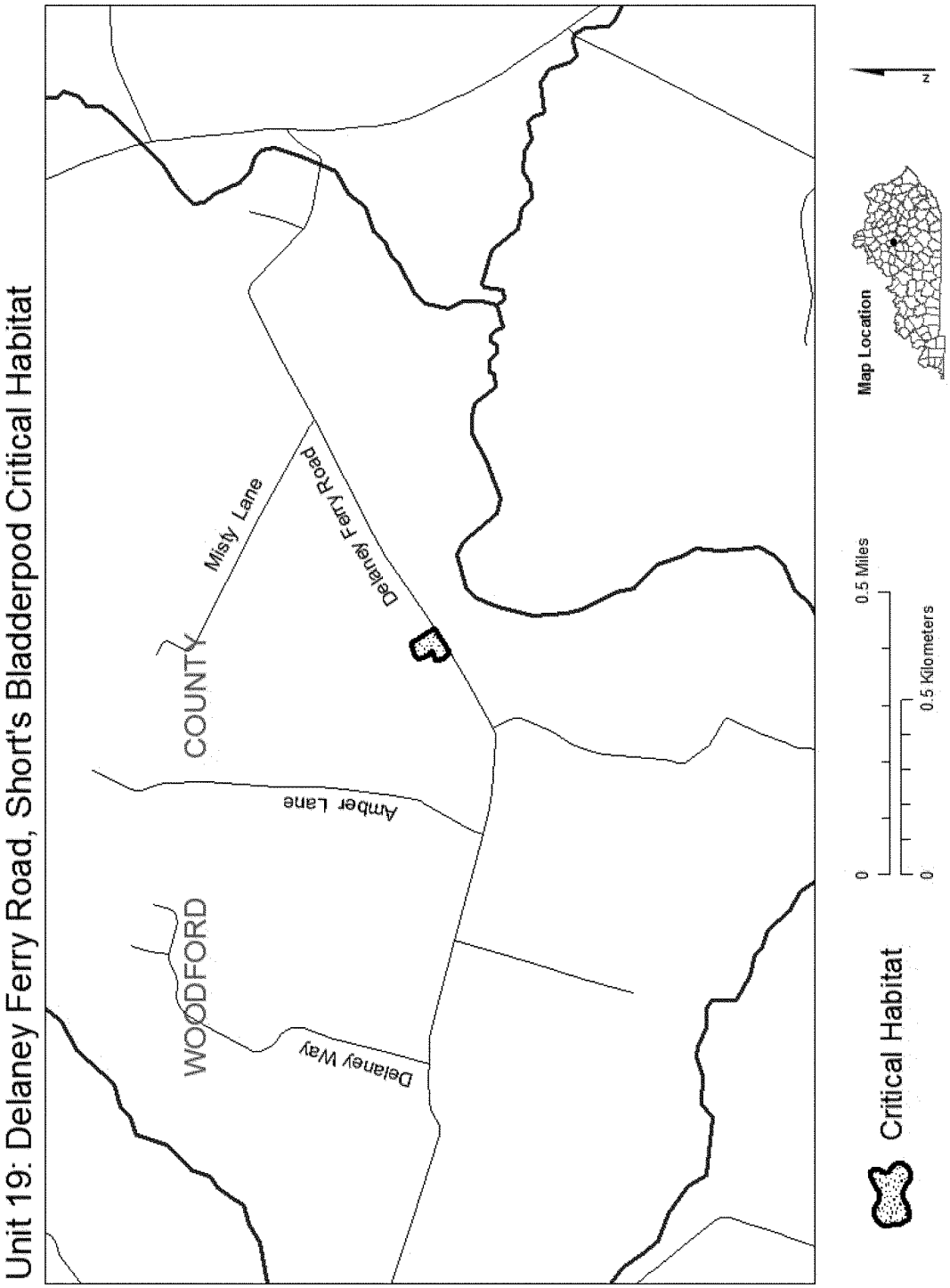
(22) Unit 17: Little Benson Creek, Franklin County, Kentucky. Map of Unit 17 follows:



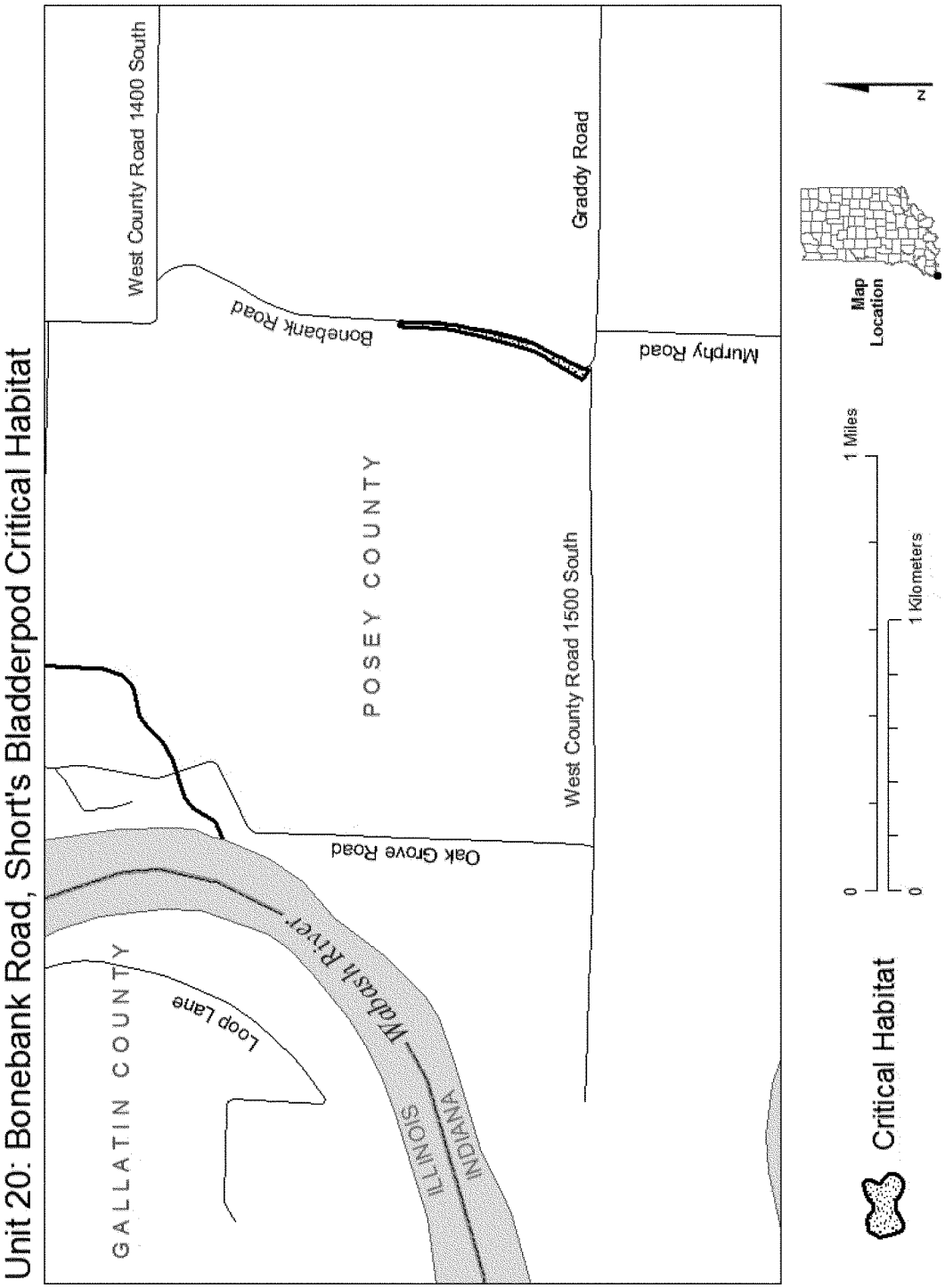
(23) Unit 18: Boone Creek, Clark County, Kentucky. Map of Unit 18 follows:



(24) Unit 19: Delaney Ferry Road, Woodford County, Kentucky. Map of Unit 19 follows:



(25) Unit 20: Bonebank Road, Posey County, Indiana. Map of Unit 20 follows:



* * * * *

Dated: July 19, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–18456 Filed 8–1–13; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2013–0087; 4500030113]

RIN 1018–AZ11

Endangered and Threatened Wildlife and Plants; Endangered Status for Physaria globosa (Short's bladderpod), Helianthus verticillatus (whorled sunflower), and Leavenworthia crassa (fleshy-fruit gladecress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list *Physaria globosa* (Short's bladderpod), *Helianthus verticillatus* (whorled sunflower), and *Leavenworthia crassa* (fleshy-fruit gladecress) as endangered under the Endangered Species Act of 1973, as amended (Act). If we finalize this rule as proposed, it would extend the Act's protections to *Physaria globosa* (Short's bladderpod), *Helianthus verticillatus* (whorled sunflower), and *Leavenworthia crassa* (fleshy-fruit gladecress) to conserve these species.

DATES: We will accept all comments received or postmarked on or before October 1, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by September 16, 2013.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search field, enter Docket No. FWS–R4–ES–2013–0087, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!'' If your comments will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2013–0087; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more details).

FOR FURTHER INFORMATION CONTACT: Mary E. Jennings, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street, Cookeville, TN 38501; by telephone 931–528–6481; or by facsimile 931–528–7075. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we intend to list a species are endangered or threatened throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** to list the species as endangered or threatened and make a determination on our proposal within 1 year. Listing a species as an endangered or threatened species can only be completed by issuing a rule.

This rule proposes to add three plants to the Federal List of Endangered and Threatened Plants. We are proposing to list Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress as endangered species under the Act. Elsewhere in today's **Federal Register**, we propose to designate critical habitat for the Short's bladderpod, freshy-fruit gladecress, and the whorled sunflower.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

We have determined that listing is warranted for these species, which are currently at risk throughout all of their respective ranges due to threats related to:

- For Short's bladderpod, potential future construction and ongoing maintenance of transportation rights-of-way; prolonged inundation and soil erosion due to flooding and water level manipulation; overstory shading due to forest succession and shading and competition from invasive, nonnative plant species; and small population sizes.
- For whorled sunflower, mechanical or chemical vegetation management for industrial forestry, right-of-way maintenance, or agriculture; shading and competition resulting from vegetation succession; limited distribution and small population sizes.
- For fleshy-fruit gladecress, loss of habitat due to residential and industrial development; conversion of agricultural sites for use as pasture; mowing and herbicide treatment prior to seed production; and off-road vehicles and dumping.

We will seek peer review. We are seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available science and application of that science and to provide any additional information to improve this proposed rule. Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, reproducing, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for these species, their habitats or both.

(2) The factors that are the basis for making a listing determination for a

species under section 4(a) of the Act, which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of these species, including the locations of any additional populations of these species.

(5) Current or planned activities in the areas occupied by these species and possible impacts of these activities on them.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Previous Federal Actions

The Act requires the Service to identify species of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial data. The Act directed the Secretary of the Smithsonian Institution to prepare a report on endangered and threatened plant species, which was published as House Document No. 94–51. The Service published a notice in the **Federal Register** on July 1, 1975 (40 FR 27824), in which we announced that more than 3,000 native plant taxa named in the Smithsonian's report and other taxa added by the 1975 notice would be reviewed for possible inclusion in the List of Endangered and Threatened Plants. The 1975 notice was superseded on December 15, 1980 (45 FR 82480), by a new comprehensive notice of review for native plants that took into account the earlier Smithsonian report and other accumulated information. On November 28, 1983 (48 FR 53640), a supplemental plant notice of review noted the status of various taxa. Complete updates of the plant notice were published on September 27, 1985 (50 FR 39526) and on February 21, 1990 (55 FR 6184).

In these reviews, Short's bladderpod (as *Lesquerella globosa*) was listed as a Category 2 candidate, taxa for which information in the possession of the Service indicated that proposing to list the species as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threat were not available to support listing rules. Further biological research and field study usually was necessary to ascertain the status of taxa in this category.

Fleshy-fruit gladecress was recognized as consisting of two varietal taxa in these reviews, *Leavenworthia crassa* var. *crassa* and *L. crassa* var. *elongata.* In the 1980 review, var. *crassa* was listed as a Category 2 candidate, while var. *elongata* was listed as a Category 1 candidate, taxa for which the Service had sufficient information to support listing as either endangered or threatened. In the 1983, 1985, and 1990 reviews both varieties of *Leavenworthia crassa* were listed as Category 2 candidates. Many Category 2 candidate species were found not to warrant listing, either because they were not endangered or threatened or because they did not qualify as species under the definitions in the Act (58 FR 51144, September 30, 1993).

In 1993, the Service eliminated candidate categories, and Short's bladderpod and the two varieties of fleshy-fruit gladecress were no longer candidates until they were again elevated to candidate status on October 25, 1999 (64 FR 57534). The 1999 review elevated the species *Leavenworthia crassa* (fleshy-fruit gladecress) to candidate status, but did not recognize intraspecific taxa (varieties) due to changes in scientifically accepted taxonomy. Whorled sunflower was first listed as a candidate species in the 1999 review. All three of these species were then included in subsequent candidate notices of review on October 30, 2001 (66 FR 54808), June 13, 2002 (67 FR 40657), May 4, 2004 (69 FR 24876), May 11, 2005 (70 FR 24870), September 12, 2006 (71 FR 53756), December 6, 2007 (72 FR 69034), December 10, 2008 (73 FR 75176), November 9, 2009 (74 FR 57804), November 10, 2010 (75 FR 69222), October 26, 2011 (76 FR 66370), and November 21, 2012 (77 FR 69994).

Species Information

Short's bladderpod

Physaria globosa is a member of the mustard family (Brassicaceae) known from Posey County, Indiana; Clark, Franklin and Woodford Counties, Kentucky; and Cheatham, Davidson, Dickson, Jackson, Montgomery, Smith, and Trousdale Counties, Tennessee. The following description is based on Flora of North America (*http://www.efloras.org/florataxon.aspx?flora_id=1&taxon_id=250095135,* accessed on December 7, 2012) and Gleason and Chronquist (1991, p. 187).

Short's bladderpod is an upright biennial or perennial (lives for 2 years or longer) with several stems, some branched at the base, reaching heights up to 50 centimeters (cm) (20 inches (in.)), and which are leafy to the base of the inflorescence (a group or cluster of flowers arranged on a stem that is composed of a main branch or a complicated arrangement of branches). The basal leaves, borne on short petioles (stalks) are 2.5 to 5 cm (1 to 2 in.) in length and 0.5 to 1.5 cm (0.2 to 0.6 in.) wide, obovate (egg-shaped and flat, with the narrow end attached to the stalk) or oblanceolate (with the widest portion of the leaf blade beyond the middle) in shape, with a smooth or slightly wavy margin, and gray-green in color due to a layer of dense hairs. Leaves are gradually reduced in size and petiole length higher up the stem. Numerous flowers are borne on a raceme (elongate,

spike-shaped inflorescence to which individual flowers are attached by slender pedicels, or stalks, which in Short's bladderpod are longer than the flowers). The yellow flowers are composed of four spoon-shaped petals, 0.4 to 0.7 cm (0.16 to 0.28 in.) long. The fruit is globose in shape and lightly beset with stellate (star-shaped) hairs, but becoming smooth with time.

Taxonomy. A member of the mustard family (Brassicaceae), Short's bladderpod was first described as *Vesicaria globosa* by Desvaux in 1814 (Payson 1922, pp. 103–236). Because of several distinctive characters, Watson (1888, pp. 249–255) proposed that the American species of the genus *Vesicaria* be placed in the genus *Lesquerella.* This treatment was recognized as valid, until Al-Shehbaz and O'Kane (2002, entire) reunited most of the genus *Lesquerella* with the genus *Physaria.* This determination was supported by molecular, morphological, cytological, biogeographic, and ecological lines of evidence (Al-Shehbaz and O'Kane 2002, p. 320). Flora of North America recognizes this change, using the scientific name *Physaria globosa* for Short's bladderpod (*http://www.efloras.org/florataxon.aspx?flora_id=1&taxon_id=250095135,* accessed on April 20, 2011).

Distribution and Status. In a 1992 status survey for Short's bladderpod, Shea (1993, pp. 6–15) observed the species at only 26 of 50 historical sites: 1 in Indiana, 14 in Kentucky, and 11 in Tennessee. The remaining sites were classified as follows (Shea 1993, p. 10–14):

- Status uncertain—4 occurrences where the species had been observed during the prior 25 years and where appropriate habitat existed with no evidence that the occurrence had been destroyed (Shea population numbers 27 through 30).
- Extirpated—one occurrence where the habitat had been severely altered (Shea population number 31).
- Historical—5 occurrences where the species had not been observed during the prior 25 years, but where appropriate habitat remained (Shea population numbers 32 through 36).
- Locality information incomplete—14 occurrences for which location information was insufficient to confirm the species' presence or absence, despite searches having been attempted in some cases (Shea population numbers 37 through 50). Many of these putative occurrences were based on herbarium specimens dating from the late-19th to mid-20th centuries that contained little information about sites from which they were collected. Except for the populations numbered 37, 42, and 50, Shea (1993) searched for suitable habitat or Short's bladderpod plants in areas associated with these occurrences but did not find the species.

Later surveys found Short's bladderpod extant at two of these sites, Tennessee element occurrence (EO) numbers 8 and 12, which correspond to Shea's population numbers 34 and 29, respectively.

We used data provided to us by conservation agencies in the States where the species occurs (Indiana Natural Heritage Data Center (INHDC) 2012, Kentucky Natural Heritage Program (KNHP) 2012, Tennessee (Tennessee Natural Heritage Inventory Database (TNHID) 2012) to determine the current distribution and status of Short's bladderpod. Difficulty in relating the species' distribution at the time of Shea's (1993, entire) status survey to its current distribution comes as a result of State conservation agencies revising the mapping of some element occurrences in these databases. In two instances, pairs of occurrences that Shea (1993) considered distinct have been combined into single element occurrences (Table 1). Conversely, TNHID (2012) treats as two distinct element occurrences the two locations that Shea (1993, p. 85, 108) mapped together as population number 23. One of these occurrences (TN EO number 22) was extant as of 2012 (Table 1), while the other (TN EO number 2) is extirpated (Table 2). Based on current mapping, State conservation agencies now recognize 24 element occurrences that correspond to populations that Shea (1993, entire) found extant in 1992. Of these 24 occurrences, 18 were extant in 2012. Accounting for rediscovery of the two Tennessee occurrences that Shea (1993, pp. 10–14) did not find during 1992, and recent changes in element occurrence mapping, a total of 20 occurrences that were documented by Shea (1993, entire) were still considered extant as of 2012 (Table 1).

The approximate range of abundance shown in Table 1 is primarily based on individual plants. As a result of location, it was impossible to enumerate individual plants. This resulted in are two instances where TNHID surveyed these populations from a boat and reported the approximate range in clusters.

TABLE 1—LIST OF KNOWN EXTANT SHORT'S BLADDERPOD OCCURRENCES BY STATE AND COUNTY, WITH ELEMENT OCCURRENCE (EO) NUMBERS ASSIGNED BY STATE NATURAL HERITAGE PROGRAMS (INHDC (2012), KNHP (2012), TNHID (2012)), NUMBERS ASSIGNED TO POPULATIONS REPORTED IN SHEA (1993), AND FIRST AND LAST YEARS OF KNOWN OBSERVATIONS

State	County	EO Number (Shea Population Number)	First observed	Last observed	Approximate range of abundance	Land ownership
Indiana	Posey	1 (1)	1941–05–06	2012	3–1000s	IDNR.
Kentucky	Clark	1 (3)	1957	2009–05–21	2	Private.
	Franklin	4 (11, 12)	1979	2011–04–19	100–500	Private.
		7 (10)	1981	2004–05–17	1–100	Private.
		11 (13)	1983	2003–06–01	1–52	Private.
		18 (4)	1992	2012–05–09	20–350	City of Frankfort.
		22 (9)	1990-Pres	2012–05–08	2–200	private; Kentucky State Nature Preserves Commission.
		23 (14)	1990	2011–04–26	60–500	Private.
	Woodford	28	2005–05–06	2010–06–02	few	Private.
Tennessee	Cheatham	1 (18)	1956–03–02	2008–04–23	100s–1000s	COE; private.
		15 (17)	1955–04–24	2008–04–29	few–20	COE.

TABLE 1—LIST OF KNOWN EXTANT SHORT'S BLADDERPOD OCCURRENCES BY STATE AND COUNTY, WITH ELEMENT OCCURRENCE (EO) NUMBERS ASSIGNED BY STATE NATURAL HERITAGE PROGRAMS (INHDC (2012), KNHP (2012), TNHID (2012)), NUMBERS ASSIGNED TO POPULATIONS REPORTED IN SHEA (1993), AND FIRST AND LAST YEARS OF KNOWN OBSERVATIONS—Continued

State	County	EO Number (Shea Population Number)	First observed	Last observed	Approximate range of abundance	Land ownership
		17 (16)	1953–04–26	2012–06–15	20–~1500	Town of Ashland City; private.
		29	1998–05–12	2008–04–29	~50	COE; private.
		30	1998–05–12	2008–04–29	10–25	COE; private.
	Davidson; Cheatham	10 (21,22)	1935	2012–06–15	10s–1000s ..	Private.
	Davidson	4 (19)	1971–05–16	2012–06–15	100s–1000s	private; COE easement.
		8 (34)	1886–04–22	2008–05–02	~50	private; COE easement.
	Dickson	32	2008–04–29	2008–04–29	~7 clusters ...	COE.
	Jackson	26	1998–05–08	2008–05–06	3 clusters	COE.
		27	1998–05–08	2008–05–06	~50	COE.
	Montgomery	12 (29)	1946–04–27	2008–05–09	~50	private; COE easement.
		22 (23a)	1969–04–28	2008–05–02	20–50	private; COE easement.
		28	1998–04–23	2008–04–29	~300	private; COE easement.
	Smith	24	1998–05–05	2008–05–06	~10	COE.
	Trousdale	3 (25)	1969–05–08	2008–05–06	40–500	COE; private.
		21 (26)	1992–04–30	2008–05–12	100–250	COE; private.

IDNR is the Indiana Department of Natural Resources.
COE is the U.S. Army Corps of Engineers.
Pres is present.

Despite the rediscovery of the two Tennessee occurrences and the discovery of 10 additional occurrences since the 1992 status survey, only 26 extant occurrences of Short's bladderpod are known to remain due to the loss of 10 occurrences during the last 20 years (Table 1). Seven of the occurrences that Shea (1993, pp. 44–71) observed in 1992, and three others (Kentucky EO number 27 and Tennessee EO numbers 23 and 25) that were seen after 1992, have since been extirpated (Table 2). This constitutes a loss of 27 percent of all occurrences that were extant during 1992 or later.

TABLE 2—LIST OF EXTIRPATED SHORT'S BLADDERPOD OCCURRENCES BY STATE AND COUNTY, WITH ELEMENT OCCURRENCE (EO) NUMBERS ASSIGNED BY STATE NATURAL HERITAGE PROGRAMS (INHDC (2012), KNHP (2012), TNHID (2012)), NUMBERS ASSIGNED TO POPULATIONS REPORTED IN SHEA (1993), AND FIRST AND LAST YEARS OF KNOWN OBSERVATIONS

State	County	EO Number (Shea Population Number)	First observed	Last observed	Abundance	Land ownership
Kentucky	Bourbon	*19 (2)	1963–04–27	2005–06–09	10–120	private.
	Fayette	12 (38)	1931	1931–05–24	n/a	private.
		16 (37)	1892	1900–05–09	n/a	private.
	Franklin	*2 (6)	1979–05	1992–05–04	11	private.
		*3 (8)	1979	1994–05–12	4	private.
		5 (39)	1880	1880–06	n/a	private.
		8 (27)	1981	1981–05–03	~40	private.
		14 (40)	1856	1856–05	n/a	private.
		*20 (5)	1992	1992–05–19	21	private.
		*21 (7)	1992	1992–05–12	7	private.
	Jessamine	6 (42)	1942	1942–05–16	n/a	private.
		13 (32)	1939	1939–04–27	n/a	private.
		17 (28)	1991–Pre	1991–Pre	n/a	private.
		+27	1990	1993–05–10	1–7	private.
	Madison	10 (43)	1903	1903–05–16	n/a	private.
	Mercer	24 (44)	1916	1916–05–13	1–7	private.
	Nelson	25	1935–pre	1935–pre	n/a	private.
	Powell	15 (45)	1923	1923–05–26	n/a	private.
	Scott	*9 (15)	1930	1992–05–19	2	private.
Tennessee	Cheatham	14 (33)	1969–04–29	1969–04–29	n/a	private.
	Davidson	*9 (20)	1974–04–16	1998–04–16	20–29	private; COE easement.
		+23	1997–05–09	1997–05–09	~200	private.

TABLE 2—LIST OF EXTIRPATED SHORT'S BLADDERPOD OCCURRENCES BY STATE AND COUNTY, WITH ELEMENT OCCURRENCE (EO) NUMBERS ASSIGNED BY STATE NATURAL HERITAGE PROGRAMS (INHDC (2012), KNHP (2012), TNHID (2012)), NUMBERS ASSIGNED TO POPULATIONS REPORTED IN SHEA (1993), AND FIRST AND LAST YEARS OF KNOWN OBSERVATIONS—Continued

State	County	EO Number (Shea Population Number)	First observed	Last observed	Abundance	Land ownership
	Jackson	+25	1998–07–24	1998–07–24	5	COE
	Maury	7 (31)	1955–04–23	1955–04–23	n/a	private.
	Montgomery	2 (23b)	1968–05–07	1992–04–28	1	private.
		13 (30)	1975–05–25	1975–05–25	n/a	private.
		18 (35)	1967–06–01	1967–06–01	n/a	private.
		31	1979–04–09	1979–04–09		private.
	Smith	20 (24)	1992–05–01	1998–04–17	30	private; COE easement.

*Occurrences observed by Shea (1993), but which are now considered extirpated.
+Occurrences not documented in Shea (1993) that have been observed since 1992, but which are now considered extirpated.
COE is the U.S. Army Corps of Engineers.
Pres is present.

No records exist in State-maintained databases for seven populations that Shea (1993, pp. 12–13) treated as historical or lacking sufficient locality information to verify (population number 41 from Kentucky, and numbers 36 and 46 through 50 from Tennessee). Therefore, Table 1 and Table 2 do not include entries for these Shea population numbers. Shea (1993, p. 15) also determined that four historical reports for the species were erroneous: One each from Monroe County, Indiana, and Vinton County, Ohio; and one each from unknown counties in Kansas and Vermont.

There are now 8 known extant occurrences in Kentucky, 17 in Tennessee, and 1 in Posey County, Indiana (Table 1). Extant occurrences in Kentucky are distributed among Clark (1), Franklin (6), and Woodford (1) Counties, and in Tennessee among Cheatham (5), Davidson (2), Dickson (1), Jackson (2), Montgomery (3), Smith (1), and Trousdale (2) Counties. One Tennessee occurrence straddles the county line between Cheatham and Davidson Counties. There are 19 occurrences in Kentucky and 10 in Tennessee that have either been extirpated or for which inadequate information exists to relocate them. Adding the seven populations that Shea (1993, p. 12–13) treated as either historical or lacking complete locality information, and which are not represented in State-maintained databases used to create Tables 1 and 2, these numbers rise to 20 for Kentucky and 16 for Tennessee. Thus, there is a total of 62 occurrences that have been reported for Short's bladderpod. However, when reporting percentages of all known occurrences that are now or historically were in the case of extirpated occurrences, affected by various threats, we only use the 55 records that have been verified and are currently tracked in State-maintained databases.

There are 19 extant Short's bladderpod occurrences that are located on city, State, or federal lands. The Indiana occurrence is on lands owned by the State of Indiana and managed by the Indiana Department of Natural Resources (IDNR). A portion of one occurrence in Kentucky is located in a State nature preserve owned and managed by the Kentucky State Nature Preserves Commission (KSNPC), and another occurs in a park owned by the City of Frankfort, where access is limited, but no specific management is provided for the species or its habitat. In Tennessee, there are 15 occurrences that are entirely or partially located on lands owned or leased by the U.S. Army Corps of Engineers (Corps) adjacent to the Cumberland River. Some of these Corps lands are wildlife management areas (WMA) cooperatively managed by the Tennessee Wildlife Resources Agency (TWRA). The plants at EO numbers 29 and 32 are located in TWRA's Cheatham WMA, and those at EO numbers 24 through 27 are located in TWRA's Cordell Hull WMA. Part of one occurrence in Tennessee is located on lands owned by Ashland City.

Habitat. Short's bladderpod typically grows on steep, rocky, wooded slopes and talus (sloping mass of rock fragments below a bluff or ledge) areas. It also occurs along tops, bases, and ledges of bluffs. The species usually is found in these habitats near rivers or streams and on south- to west-facing slopes. Most populations are closely associated with calcareous outcrops (Shea 1993, p. 16). The Short's bladderpod site in Indiana, where the species is found in a narrow strip of herbaceous vegetation between a road and forested bank of a cypress slough (M. Homoya, Natural Heritage Program Botanist, Indiana Department of Natural Resources (IDNR), December 2012), is unique among populations of the species. The occurrence in Indiana is within the Shawnee Hills Section of the Interior Low Plateaus Physiographic Province (Quarterman and Powell 1978, pp. 30–31), on a site underlain by undifferentiated outwash from the Wisconsinan glaciation (Indiana Geologic Survey 2002) as opposed to the calcareous geology on which the species occurs in Kentucky and Tennessee. The soil at the Indiana site is Weinbach silt loam, which forms in acid alluvium on river terraces, and is nearly level with 0 to 2 percent slopes (USDA 1979, p. 89). This site is on a terrace adjacent to an oxbow swamp formed in an abandoned meander of the Wabash River (Quarterman and Powell 1978, p. 244).

Kentucky occurrences are located on bluffs and hillsides adjacent to the Kentucky River or its tributaries within the Bluegrass Section of the Interior Low Plateaus Province (Fenneman 1938, pp. 411–448; Quarterman and Powell 1978, pp. 30–31). Extant occurrences in Kentucky predominantly are found on the Ordovician age Lexington Limestone and Tanglewood Limestone Members (Kentucky Geological Survey, *http://www.arcgis.com/home/item.html?id=d32dc6edbf9245cdbac3fd7e255d3974,* accessed on January 25, 2013), and the Fairmount-Rock outcrop Complex is the prevalent soil type at most of the sites where the species is found (U.S. Department of Agriculture (USDA), Soil Survey Geographic Database, available online at *http://soildatamart.nrcs.usda.gov,* accessed on January 30, 2013). Soils of the Fairmount series formed from

weathered limestone interbedded with thin layers of calcareous shale and are shallow, well-drained, and slowly permeable. As implied in the name of this complex, limestone outcrops are common on the steeply sloped sites where this soil occurs, especially along river bluffs (USDA 1985, p. 64).

Tennessee occurrences are located primarily on steep hills or bluffs adjacent to the Cumberland River within the Highland Rim and Central (also known as Nashville) Basin Sections of the Interior Low Plateaus Province (Fenneman 1938, pp. 411–448; Quarterman and Powell 1978, pp. 30–31). Three occurrences in Cheatham County are adjacent to the Harpeth River near its confluence with the Cumberland River. Extant occurrences in Tennessee are found across a wider range of geology and soils than those in Indiana or Kentucky. The Mississippian age Fort Payne Formation, which includes limestone and calcareous siltstone, and Warsaw Limestone are the predominant geologic formations underlying occurrences in Cheatham, Dickson, and Montgomery Counties (Moore *et al.* 1967, Wilson 1972, Marsh *et al.* 1973, Finlayson *et al.* 1980). In Cheatham and Dickson Counties, the main soil mapped in locations where Short's bladderpod occurs is simply ''Rock outcrop, very steep'' (USDA, Soil Survey Geographic Database, available online at *http://soildatamart.nrcs.usda.gov,* accessed on January 30, 2013). In Montgomery County, Baxter soils and Rock outcrop and Bodine cherty silt loam are the soil types on which Short's bladderpod occurs (USDA, Soil Survey Geographic Database, available online at *http://soildatamart.nrcs.usda.gov,* accessed on January 30, 2013). Baxter soils formed from weathered cherty limestone, and where they are mapped as Baxter soils and Rock outcrop they are steeply sloped and Rock outcrop can make up as much as 20 percent of the map unit (USDA 1975, pp. 12–14). Bodine soils are well-drained, cherty soils that formed from weathered cherty limestone; are steeply sloped; and include areas near the escarpment adjacent to the Cumberland River floodplain where cherty limestone bedrock is exposed (USDA 1975, pp. 16–17).

Silurian age limestone and shale of the Waynes Group and the Brassfield Limestone and Ordovician age limestone of the Leipers and Catheys Formations are the predominant geologic formations underlying the occurrences located in Davidson County (Wilson 1979). The dominant soils on which Short's bladderpod occurs in this county are the Bodine-Sulphura Complex (USDA, Soil Survey Geographic Database, available online at *http://soildatamart.nrcs.usda.gov,* accessed on January 30, 2013), which formed from weathered cherty limestone on sloping to very steep sites and are somewhat excessively well-drained. Depth to bedrock within Sulphura soils is less than 16 cm (40 in), but deeper in Bodine soils, and chert content is high near the surface of these soils (USDA 1981, pp. 46–47).

Ordovician age limestones of the Leipers and Cathey Formations, Bigby-Cannon Limestone, and Hermitage Formation are the predominant geologic formations underlying occurrences in Smith, Trousdale, and Jackson Counties (Wilson *et al.* 1972, Wilson 1975, Wilson *et al.* 1980, Kerrigan and Wilson 2002). In these counties, Short's bladderpod occurs across a wider range of soil series, all of which are formed from weathered limestone or interbedded siltstone and limestone on steeply sloped or hilly sites. The soils are shallow, are rocky, or contain areas of bedrock outcrop (USDA 2001, pp. 19–20, 28, 59, 64; USDA 2004a, pp. 22–23, 36–37, 83, 87; USDA 2004b, pp. 21, 75, 82).

Within the physical settings described above, the most vigorous (Shea 1992, p. 24) and stable (TDEC 2009, p. 1) Short's bladderpod occurrences are found in forested sites where the canopy has remained relatively open over time. Common woody species associated with Short's bladderpod are *Acer negundo* (box elder), *Acer rubrum* (red maple), *Aesculus glabra* (Ohio buckeye), *Celtis laevigata* (hackberry), *Cercis canadensis* (redbud), *Fraxinus Americana* (white ash), *Juniperus virginiana* (eastern red cedar), *Lonicera japonica* (Japanese honey suckle), *Parthenocissus quinquefolia* (Virginia creeper), *Symphoricarpos orbiculatus* (coral berry) and *Ulmus americana* (American elm). Common herbaceous associates include *Alliaria petiolata* (garlic mustard), *Camassia scilloides* (wild hyacinth), *Chaerophyllum procumbens* (spreading chervil), *Delphinium tricorne* (dwarf larkspur), *Galium aparine* (cleavers), *Lamium* sp. (dead nettle), *Phacelia bipinnatifida* (forest phacelia), *Polygonatum biflorum* (Solomon's seal), *Sedum pulchellum* (stonecrop), *Silene virginica* (fire-pink), and *Verbascum thapsus* (common mullein) (Shea 1993, p. 19).

Biology. Published literature on the biology of Short's bladderpod is lacking. The species flowers during April and May (Gleason and Chronquist 1991, p. 187, Shea 1993, p. 20). Dr. Carol Baskin (Professor, University of Kentucky, pers. comm., December 2012) observed low fruit set in the Indiana population and, based on lack of seed production from plants in a greenhouse from which pollinators were excluded, she concluded that the species likely is self-incompatible. Self-incompatibility has been reported in other species of *Physaria* (Tepedino *et al.* 2012, p. 142; Edens-Meier *et al.* 2011, p. 292; Claerbout *et al.* 2007, p. 134; Bateman 1955, p. 64), and the molecular mechanisms underlying self-recognition between pollen and stigma and subsequent pollen rejection have been well studied in the Brassicaceae (Takayama and Isogai 2005, pp. 468–474). Dr. Baskin (pers. comm., December 2012) also observed that seeds produced by Short's bladderpod apparently are capable of forming a seed bank, as seeds that were planted in a greenhouse were observed to germinate and produce seedlings over several years, rather than all germinating in the year they were planted.

The pollinators for Short's bladderpod have not been studied, but Rollins and Shaw (1973, p. 6) reported that bees and flies were repeatedly observed visiting flowers of other congeners. The majority of floral foragers observed visiting *Physaria filiformis* (Missouri bladderpod) were true bees representing five families, with greater than 50 percent from the family Halictidae. The families Apidae and Andrenidae also were well represented among bee pollinators of this species, the most dependable and frequent of which were ground-nesters. Several flies of the family Syrphidae also carried Missouri bladderpod pollen (Edens-Meier *et al.* 2011, pp. 293). Tepedino *et al.* (2012, pp. 143–145) found that native ground-nesting bees from the families Andrenidae and Halictidae were the most reliable pollinators visiting flowers of three *Physaria* species, but they reported fewer numbers of pollen-carrying flies from the families Tachinidae and Conopidae. They estimated that maximum flight distance ranged from 100 to 1400 meters (m) (330 to 4593 feet (ft)) for the Andrenids and 40 to 100 m (130 to 330 ft) for the Halictid bees they collected.

Whorled Sunflower

Helianthus verticillatus is a member of the sunflower family known from Cherokee County, Alabama; Floyd County, Georgia; and McNairy and Madison Counties, Tennessee. It is a perennial arising from horizontal, tuberous-thickened roots with slender rhizomes. The stems are slender, erect, and up to 2 meters (m) (6 feet (ft)) tall. The leaves are opposite on the lower stem, verticillate (whorled) in groups of

3 to 4 at the mid-stem, and alternate or opposite in the inflorescence at the end. Individual leaves are firm in texture and have a prominent mid-vein, but lack prominent lateral veins found in many members of the genus. The leaves are linear-lanceolate in shape, narrowing at the tip to a point, and 7.5 to 18.5 cm (3.0 to 7.2 in.) long and 0.7 to 2.0 cm (0.3 to 0.8 in.) wide. The flowers are arranged in a branched inflorescence typically consisting of 3 to 7 heads. The heads are about 1 cm high (0.4 in.), are about 1.5 cm (0.6 in.) wide, and have deep yellow ray flowers and lighter yellow disk flowers. The seeds are 0.4 to 0.5 cm (0.16 to 0.2 in.) long.

Several members of the aster family are similar in appearance to whorled sunflower, with minor morphological differences being apparent. *Helianthus grosseserratus* is similar to whorled sunflower but its leaves typically are arranged in an alternating pattern, which differs from the whorled arrangement of *H. verticillatus. Helianthus angustifolius* can be confused with *H. verticillatus* but it has narrower leaves and reddish disk flowers, as opposed to the yellow disk flowers of *H. verticillatus* (Schotz 2001, p. 1). *Helianthus giganteus* often exhibits whorled leaves, but *H. verticillatus* leaves have only the midvein prominent while *H. giganteus* has lateral veins evident on the leaves (Matthews *et al.* 2002, p. 22).

Taxonomy. Whorled sunflower was described by J.K. Small (1898, p. 479), based on a collection by S.M. Bain from Chester County, Tennessee, in 1892. Small distinguished it from the related *H. giganteus* by its smooth and hairless stems; narrow, entire leaf blades; and narrowly linear-lanceolate involucre (a collection or rosette of bracts subtending a flower cluster, umbel, or the like) bracts (a leaflike or scalelike plant part, usually small, sometimes showy or brightly colored, and located just below a flower, a flower stalk, or an inflorescence). No additional collections of this species had been made when Beatley (1963, p. 153) speculated that the specimens (which lacked basal parts and mature seeds) from this single collection site perhaps represented a single aberrant individual formed from hybridization of an opposite- and alternate-leaved *Helianthus* species. With no new material to examine, Heiser *et al.* (1969, p. 209) and Cronquist (1980, p. 36) accepted Beatley's suggestion that whorled sunflower was a hybrid.

The rediscovery of the species in 1994, in Georgia, provided ample material for reexamination of this species' taxonomic status. Plants throughout these new populations were found to conform to the morphology of the type collection of whorled sunflower. Morphological studies and root-tip chromosome counts by Matthews *et al.* (2002, pp. 17–23) validated this taxon's status as a distinct, diploid species. The taxonomic validity of this species was also confirmed through genetic studies by Ellis *et al.* (2006, pp. 2345–2355). Their studies showed through comparative genetic studies with its putative parents, *H. grosseserratus* and *H. angustifolius,* that whorled sunflower is a good taxonomic species of non-hybrid origin (Ellis *et al.* 2006, pp. 2351–2352).

Distribution and Status. There are four whorled sunflower populations known to be extant, each consisting of multiple tracked subpopulations (Table 3) (Alabama Natural Heritage Program (ANHP) 2012, Georgia Department of Natural Resources (GDNR), TNHID 2012). In Floyd County, Georgia, there is one population comprised of four subpopulations. There is one population in Cherokee County, Alabama, comprised of two subpopulations. Populations in Georgia and Alabama are less than 2 km (1.2 mi) apart. In Tennessee, there is one population comprised of six subpopulations in McNairy County and one population comprised of four subpopulations in Madison County. Table 3 lists these populations and subpopulations, and relates them to EO numbers used by State conservation agencies to track their status. The population in Floyd County, Georgia, is located on lands owned by The Campbell Group, a timber investment management organization. This site is referred to as the Coosa Valley Prairie and is protected by a conservation easement held by The Nature Conservancy, which jointly manages the property with The Campbell Group. All other sites also are on private lands but are not protected.

TABLE 3—LIST OF WHORLED SUNFLOWER POPULATIONS AND SUBPOPULATIONS BY STATE AND COUNTY, WITH CORRESPONDING SITE NAMES AND ELEMENT OCCURRENCE (EO) NUMBERS FROM STATE CONSERVATION AGENCY DATABASES IN ALABAMA, GEORGIA, AND TENNESSEE

Population (County, State)	Subpopulation number(s)	Site name	Heritage EO Number
Cherokee, AL	1	Kanady Creek Prairie	AL_1
	2	Locust Branch Prairie	AL_2
Floyd, GA	1	Jefferson Road Wet Prairie	GA_1
	2	Kanady Creek Wet Prairie	GA_4
	3	Upper Mud Creek Wet Prairies	GA_5
	4	Sunnybell Prairie	GA_7
Madison, TN	1–6	Turk Creek	TN_2
McNairy, TN	1–4	Prairie Branch	TN_3

Status surveys have been conducted for this species throughout its range (Nordman 1998, pp. 1–17; 1999, pp. 1–5; Schotz 2001, pp. 1–14; Allison 2002, pp. 1–2; Lincicome 2003, pp. 1–2). Despite these extensive surveys, the number of known populations remains low. Schotz (2001, pp. 1, 10) located 1 new population out of 44 attempts, representing a success rate of only 2 percent. Surveys during 2000 and 2002 in Tennessee were unsuccessful at locating any additional sites (Lincicome 2003, pp. 1–2). Surveys in 2006 resulted in discovery of the population in McNairy County, Tennessee (Tennessee Division of Natural Areas 2008, p. 2).

Initial efforts to estimate population sizes of whorled sunflower relied on counting individual stems (Allison 2002, pp. 3–8; Schotz 2001, pp. 8–10); however, due to the species' clonal growth habit, stem counts overestimate the true number of genetically distinct individuals (genets). Ellis *et al.* (2006, p. 2349) found that the genetic population size is much smaller than the number of stems in a population and that a more accurate population census could be made at most whorled sunflower sites

by counting obvious clusters of stems rather than individual stems. However, Mandel (2010, p. 2056) reported that individual clusters were much less distinct in a portion of the Alabama site she sampled.

Ellis *et al.* (2006, p. 2351) counted 70 distinct clusters at the site in Madison, Tennessee, which closely equated to 70 separate individuals through genetic analyses; however, not all clusters were sampled at this site (Mandel, pers. comm., 2012). At the McNairy County, Tennessee, population, 36 clusters of plants were found growing along creek banks at the unplowed edges of cultivated crop fields and extending into a railroad right-of-way (Tennessee Division of Natural Areas 2008, p. 3). Mandel (2010, p. 2056) sampled 19 clusters at the McNairy County population and determined these represented 24 genets; however, only two of the four subpopulations mapped at this population were sampled (Mandel, pers. comm., 2012).

Mandel (2010, p. 2058) sampled the Alabama subpopulation number 1 (Table 3) using two methods. In one portion of the site, leaf tissue was collected from 15 distinct clusters, which represented 24 genets. However, because distinct clusters were not obvious in another portion of this subpopulation, Mandel (2010, p. 2058) sampled leaves from the first 100 stalks encountered in a 1-meter-wide transect run through the largest patch of whorled sunflower in that area. These 100 stalks were within an approximately 11-m (40-ft) long portion of this transect, and represented 46 distinct genets. Mandel (2010, p. 58) estimated that 400 stalks were present in this area and that the total number of genets was between 100 and 200. However, more recently only 79 stems, distributed among 8 clusters, were found at this site (Alabama Natural Heritage Program 2011, p. 11).

Mandel (2010, p. 2056) sampled 15 clusters growing in a ''wet prairie'' at the Georgia site, presumably representing EO number 1 from the Georgia Natural Heritage Program database (Table 3). It was determined that these clusters represented 18 genets (Mandel 2010, p. 2058), but apparently the other three subpopulations present at this population were not sampled. The true number of genets at this site is likely much greater, as others have reported vigorous growth of whorled sunflower in response to prescribed fires that are used to manage the Coosa Valley Prairie conservation easement area (M. Hodges, Georgia Director of Stewardship, The Nature Conservancy, pers. comm. May 2012; T. Patrick, Botanist, Georgia Department of Natural Resources, pers. comm. February 2012).

Based on the work of Ellis (2006) and Mandel (2010), summarized above, at one time Alabama supported the largest population with an estimated 100 individuals at the Kanady Creek Prairie site, where whorled sunflower was first found to occur in the State. However, Schotz (2011, p. 11) found only 79 stems, distributed among 8 clusters, at this site in 2011. Mandel (2010) sampled only portions of the Georgia and Tennessee populations, thus underestimating their sizes. Whorled sunflower likely is now most abundant in Georgia due to population growth in response to habitat management by The Nature Conservancy and The Campbell Group at the Coosa Valley Prairie. Schotz estimated approximately 175 to 200 stems were present at the second Alabama site in September 2008 (Schotz pers. comm. 2009), but there were only 42 stems found at this site in 2011 (Schotz 2011, p. 14). No estimate of individual plants is available for this site.

Habitat. Whorled sunflower is found in moist, prairie-like remnants, which in a more natural condition exist as openings in woodlands and adjacent to creeks. Today, the only whorled sunflower site where these habitat conditions are present over a relatively large area is located in the Coosa Valley Prairie of northwest Georgia, where the species occurs in prairie openings and woodlands interspersed among lands managed for pulpwood and timber production. At one of the Alabama subpopulations, whorled sunflower occurs in a narrow, open strip of vegetation between a roadside and adjacent forest. The second Alabama subpopulation occurs along a small intermittent stream and adjacent floodplain, in a site where an immature hardwood forest was harvested in 1998. Whorled sunflower and associated prairie species responded favorably to the timber removal, but the site was soon converted into a loblolly pine plantation and the planted seedlings have grown into a young, dense stand into which little light penetrates. As of 2012, there were few whorled sunflower plants or prairie associates present at this site. Known populations of this species in Tennessee are relegated mostly to narrow bands of habitat between cultivated fields and creeks and adjacent to roads and railroad rights-of-way. The largest concentration of plants in Tennessee is found at the Madison County population, in a 1-ha (2.5-ac) patch of remnant, wet prairie habitat wedged between US Highway 45 and a railroad right-of-way.

The Alabama and Georgia populations are located on flat to gently rolling uplands and along stream terraces in the headwaters of Mud Creek, a tributary to the Coosa River. In Tennessee, the Madison County population occurs along Turk Creek, a tributary to the South Fork Forked Deer River, and in adjacent uplands. The McNairy County population occurs along Prairie Branch, a headwater tributary to Muddy Creek in the Tuscumbia River drainage.

We used the Natural Resources Conservation Service's Web Soil Survey to determine the soil types on which whorled sunflower populations occur across its range (USDA, Web Soil Survey, available online at *http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm,* accessed on January 30, 2013). The most prevalent soils where the species occurs in Georgia are Conasauga, Lyerly, Townley, and Wolftever silt loams and Dowellton silty clay loam. The silt loam soils all formed from weathered limestone or shale, and occupy various land forms from broad upland ridges to low stream terraces. These soils share the characteristics of being moderately well-drained to well-drained, being slightly to extremely acid, and having low to moderate fertility and organic matter content and clayey subsoils (USDA 1978a, pp. 24–54). The Dowellton silty clay loam formed in alluvium (soil material deposited by running water) on low stream terraces and upland depressions is poorly drained, is moderate in fertility and organic content, is neutral to strongly acid, and has a clayey subsoil (USDA 1978a, pp. 28–29).

Alabama subpopulations inhabit the Gaylesville silty clay loam, a deep, poorly drained, slowly permeable soil formed from limestone on floodplains and depressed areas in limestone valleys (USDA 1978b, p. 20). These soils are strongly to extremely acid, with low natural fertility and medium organic content (USDA 1978b, p. 20). Conasauga silt loams, discussed above, lay upslope of the Gaylesville soils at the Alabama whorled sunflower sites.

In Madison County, Tennessee, the population is primarily found on Falaya silt loam, which are poorly drained soils that formed in alluvium derived from loess (loamy soil material believed to be deposited by wind) and are strongly to very strongly acid (USDA 1978, p. 44). The McNairy County, Tennessee, population occurs on Iuka and Enville fine sandy loam soils, both of which occupy floodplains and are occasionally flooded during winter and early spring (USDA 1997, pp. 73–76).

The list of associated species in these habitats indicates a community with

strong prairie affinities. Dominant grasses of the tall grass prairie are present including *Schizachyrium scoparium* (little bluestem), *Sorghastrum nutans* (Indian grass), *Andropogon gerardii* (big bluestem), and *Panicum virgatum* (switch grass). Other common herbaceous associates include *Bidens bipinnata* (Spanish needles), *Carex cherokeensis* (Cherokee sedge), *Hypericum sphaerocarpum* (roundseed St. Johnswort), *Helianthus angustifolius* (swamp sunflower), *Helenium autumnale* (common sneezeweed), *Lobelia cardinalis* (cardinal flower), *Pycnanthemum virginianum* (Virginia mountain mint), *Physostegia virginiana* (obedient plant), *Saccharum giganteum* (sugarcane plumegrass), *Silphium terebinthinaceum* (prairie rosinweed), *Sporobolus heterolepis* (prairie dropseed), and *Symphyotrichum novae-angliae* (New England aster) (Tennessee Division of Natural Areas 2008, p. 5; Matthews *et al.* 2002, p. 23; Schotz 2001, p. 3). Some of these areas are also habitat for a number of other rare species including *Marshallia mohrii* (Mohr's Barbara's buttons), which is federally listed as threatened.

Biology. There is little published information available concerning the biology of the whorled sunflower, and the cause for its current rarity is not known. Ellis *et al.* (2006, pp. 2349–2350) investigated genetic diversity in the Georgia, Alabama, and Madison County, Tennessee, populations of whorled sunflower and found high levels of genetic diversity at the population and species levels despite its apparent rarity. They speculated that this is indicative of a species that was more widespread in the past and perhaps became rare relatively recently (Ellis *et al.* 2006, pp. 2351–2352). Whorled sunflower populations exhibited moderate levels of differentiation based on markers that are presumed to be selectively neutral, and since these populations are geographically distinct and ecological conditions vary somewhat among them Ellis *et al.* (2006, p. 2353) concluded that they likely are as differentiated, if not more so, at adaptive loci (the specific location of a gene or DNA sequence on a chromosome).

Whorled sunflower is a self-incompatible, clonal perennial and flowers from August into October (Matthews *et al.* 2002, pp. 17–20; Ellis and McCauley 2008, p. 1837). The species is easily cultivated and seed germination is high in the laboratory. Upon transplanting, this species has been shown to reproduce rapidly from rhizomes (a horizontal underground stem that produces roots and shoots), creating dense colonies. The stems can reach over 4 m (13 ft) in height (Matthews *et al.* 2002, pp. 17–20).

Ellis and McCauley (2008, p. 1837) investigated whether there were differences among populations of whorled sunflower with respect to achene viability and germination rates and whether those differences might have a genetic basis. They conducted this experiment for two generations of plants, the second generation produced from intra-population crosses of first generation plants. They also explored whether isolation of populations from one another could have fitness consequences, by conducting inter-population crosses and evaluating whether they found: (1) Evidence of genetic rescue expressed as higher fitness of hybrid individuals as compared to any or all of the parental populations; and (2) evidence of outbreeding depression. Their study included material from the Alabama, Georgia, and Madison County, Tennessee, populations. However, they were unsuccessful in cultivating plants from the Georgia population, where the flower heads contained few viable achenes, which produced low germination rates (Ellis and McCauley 2008, pp. 1837–1838).

The number of crosses that produced no viable achenes was higher in the intra-population Tennessee crosses than in any other pair of crossings. Those achenes that were produced by first generation Tennessee intra-population crosses exhibited lower germination rates than Alabama achenes, and second generation Tennessee achenes from intra-population crosses exhibited both lower viability and germination rates than the Alabama achenes. However, survival rates of germinated achenes did not differ among these populations in either generation (Ellis and McCauley 2008, p. 1840). Ellis and McCauley (2008, p. 1840) suggested three possible mechanisms that could explain these results, none of which are mutually exclusive: (1) Limited mate availability in the Tennessee population due to limited diversity of self-incompatibility alleles; (2) more extensive inbreeding within the Tennessee population; or (3) differential adaptation between the two populations.

When Tennessee plants were crossed with pollen from Alabama plants, the second generation mean achene viability and germination rates were equal to or greater than those of Alabama intra-population crosses or Alabama plants crossed with pollen from Tennessee plants. Mean achene viability of Tennessee intra-population second generation crosses was lower than all other groups and germination rates were lower than both Alabama intra-population crosses and Alabama plants crossed with pollen from Tennessee plants (Ellis and McCauley 2008, pp. 1839–1840).

Based on their results, Ellis and McCauley (2008, p. 1841) concluded that populations of whorled sunflower are not interchangeable with respect to phenotypic fitness-related characters (i.e., achene viability and germination rates) and suggested that the potential exists for genetic rescue of the Tennessee population by transplanting either seeds or seedlings produced from crosses between Tennessee and Alabama plants into the Tennessee population.

Fleshy-fruit Gladecress

Leavenworthia crassa is a glabrous (morphological feature is smooth, glossy, having no trichomes (bristles or hair-like structures)) winter annual known from Lawrence and Morgan Counties, Alabama. It usually grows from 10 to 30 cm (4 to 12 in) tall. The leaves are mostly basal, forming a rosette, and entire to very deeply, pinnately (multiple leaflets attached in rows along a central stem) lobed or divided, to 8 cm (3.1 in) long. Flowers are on elongating stems, and the petals are approximately 0.8 to 1.5 cm (0.3 to 0.6 in.) long, obovate to spatulate, and emarginate (notched at the tip). Flower color is either yellow with orange or white with yellow, usually with both color forms intermixed in a single population. The fruit is globe-shaped or slightly more elongate and about 1.2 cm (0.5 in) long with a slender beak at the tip, which is 0.25 to 0.60 cm (0.1 to 0.24 in) in length. Seeds are dark brown, nearly round in shape and winged.

Taxonomy. Fleshy-fruit gladecress was described by Rollins in 1963, from material collected in 1959, from Morgan County, Alabama. Rollins (1963, pp. 61–68) delineated the species into two varieties (var. *crassa* and var. *elongata*) based on differences in fruit length. However, herbarium and field studies have shown var. *elongata* to have variation in fruit length within the range of fruit lengths for var. *crassa* (McDaniel and Lyons 1987, p. 2–3). Thus, the species is treated as one taxon throughout this document. This taxon was brought to the attention of the scientific community in 1957, by venerable botanist Reed C. Rollins, who distinguished the taxon from similar species based on reproductive morphology.

Fleshy-fruit gladecress's globular to oblong fruit with a smooth exterior distinguishes it from another gladecress

species, *Leavenworthia alabamica* (Alabama gladecress), which has a much more elongated linear fruit with corrugated surfaces. Alabama gladecress also does not usually have the yellow and orange flower forms found mixed in populations of fleshy-fruit gladecress (McDaniel and Lyons 1987, p. 10).

Distribution and Status. Fleshy-fruit gladecress is endemic to a 21-km (13-mi) radius area in north central Alabama in Lawrence and Morgan Counties (Rollins 1963, p. 63). A 1961 record from Lauderdale County has never been confirmed (McDaniel and Lyons 1987, p. 6). Surveys by Lyons (in litt. 1981 to R. Sutter), McDaniel and Lyons (1987, p. 5–6), and Hilton (1997, p. 12) were unsuccessful at locating a number of historical sites for fleshy-fruit gladecress. McDaniel and Lyons (1987) failed to locate eight sites previously reported by Rollins (1963, p. 63), and Lloyd (1965) and Hilton (1997, p.12) were unsuccessful at locating seven sites listed in McDaniel and Lyons (1987, p. 5–6).

Currently there are six known extant occurrences of fleshy-fruit gladecress documented, three each in Morgan and Lawrence Counties, Alabama (Table 4). One of these occurs on U.S. Forest Service (USFS) lands, where it is formally protected. The majority of other sites are actively grazed, a practice that has, for the most part, maintained favorable growing conditions for the species. However, adjusting grazing patterns to take place during the species' dormant cycle would greatly reduce potential mortality of reproducing plants while maintaining ideal habitat conditions.

TABLE 4—LOCATION, SITE NAMES AND DESCRIPTIONS, AND ELEMENT OCCURRENCE (EO) RANKS FOR KNOWN EXTANT FLESHY-FRUIT GLADECRESS OCCURRENCES

County	Population designation	EO Rank	Historic site description	Land ownership
Lawrence	Bluebird Glades	D	Described by ALNHP in 1995 as approx. 0.2-ha (0.5-ac) site with 1200 plants; by 2009 was reduced to 600 plants.	Private & State ROW.
	Stover Branch Glades	C	Two subpopulations, most in pasture, 3.16 ha (7.8 ac); 2,200 to 2,500 plants; maintained by livestock management, found in 1961.	Private.
	Indian Tomb Hollow Glade	A	0.46-ha (1.1-ac) site with 1,200 to 1,300 plants; discovered 1977.	Federal—USFS.
Morgan	Cedar Plains South	C	0.04-ha (0.1-ac) site with 75 to 100 plants; discovered 1968.	Private.
	Cedar Plains North	B	1.7-ha (4.2-ac) site with 5,000 to 6,000 plants; discovered 1968.	Private.
	Massey Glade	C	2.75-ha (6.8-ac) site with 2,300 to 2,500 plants; discovered 1961.	Private.

ALNHP is the Alabama Natural Heritage Program.
ROW is right-of-way.

The Alabama Natural Heritage Program determines EO ranks ranging from A to D for sites and populations of rare species, with A indicating the status of the EO is considered to be excellent, B good, C marginal, and D poor. The EO rank is based on a combination of standardized criteria including quality, condition, viability, and defensibility. Hilton (1997, pp. 13–26) developed the specific criteria for determining EO ranks for fleshy-fruit gladecress and its habitat. Based on these criteria, only one of the six occurrences is A-ranked. It consists of an estimated 1200+ plants in a relatively undisturbed glade (Schotz 2009, p. 10). Of the remaining occurrences, one has approximately 5,000 to 6,000 plants, but is B-ranked because the site where it is located is heavily grazed. Three occurrences are C-ranked (2 occurrences have approximately 2400 plants in a degraded glade community; the other occurrence has 75 to 100 plants but is located in high-quality habitat), and one is D-ranked (600 plants in a residential area with no potential for habitat restoration) (Schotz 2009).

Habitat. This species is a component of glade flora and occurs in association with limestone outcroppings. The terms ''glade'' and ''cedar glades'' are used interchangeably to refer to shallow-soiled, open areas that are dominated by herbaceous plants and characterized by exposed sheets of limestone or gravel. Eastern red cedar (*Juniperus virginiana*) trees are frequent in the deeper soils along the edges of the glades (Hilton 1997, p. 1; Baskin *et al.* 1986, p. 138; Baskin and Baskin 1985, p. 1). Glades can vary in size from as small as a few square meters to larger than 1 square kilometer (km^2) (0.37 square miles (mi^2)) and are characterized as having an open, sunny aspect (lacking canopy) (Quarterman 1950, p. 1; Rollins 1963, p. 5). Historically, glades in northern Alabama occurred as glade complexes where sparsely vegetated patches of exposed, or nearly exposed, limestone occurred in a matrix of woody vegetation to form a mosaic of habitats grading into one another (Hilton 1997, pp. 1, 5, 64). Herbaceous diversity was irregular over these complexes, affected by changes in soil gradient and moisture, and the presence or absence of a woody vegetation component. Few undisturbed examples of this community type remain (Hilton 1997, pp. 5, 8; McDaniel and Lyons 1987, p. 11; Baskin and Baskin 1985, p. 1; Rollins 1963, p. 5–6).

Populations of fleshy-fruit gladecress are now located in glade-like remnants exhibiting various degrees of disturbance, including pastures, roadside rights-of-way, and cultivated or plowed fields (Hilton 1997, p. 5). As with most of the cedar glade endemics, fleshy-fruit gladecress exhibits weedy tendencies, and it is not uncommon to find the species growing in altered habitats. However, none of the cedar glade endemics appear to have spread very far from their original glade habitats; thus the geographic range of fleshy fruit gladecress is probably very similar to what it was in pre-settlement times (Baskin *et al.* 1986, p. 140).

All species within the small genus *Leavenworthia* are adapted to the unique physical characteristics of glade habitats, perhaps the most important of these being a combination of shallow

depth and high calcium content of soils and their tendency to have temporarily high moisture content at or very near the surface (Rollins 1963, pp. 4–6). Typically, only a few inches of soil overlie the bedrock, or, in spots, the soil may be almost lacking and the surface barren. The glade habitats that support all *Leavenworthia* species are extremely wet during the late winter and early spring, and become extremely dry in summer (Rollins 1963, p. 5).

In northern Alabama, cedar glades primarily are distributed within the Moulton Valley subdivision of the Interior Low Plateau Physiographic Province, and a few glades are scattered up the Eastern Valley subdivision of the Tennessee Valley (Hilton 1997, p. 1). Most of these glades are concentrated in the Moulton Valley, a level area underlain by Mississippian age limestone stretching across Morgan, Lawrence, Franklin, and Colbert Counties in northwestern Alabama. Glades occur in association with outcrops of Bangor Limestone and typically are level with exposed sheets of limestone or limestone gravel interspersed with fingers of cedar-hardwood vegetation. The Bangor Limestone underlying the Moulton Valley tapers to an end in eastern Morgan County, where it meets the sandstone of Brindley Mountain. Limestone is often near the soil surface, and can be seen in rocky cultivated fields and as small outcroppings at the base of low-lying forested hills (Hilton 1997).

Biology. Fleshy-fruit gladecress is an annual, spring-flowering member of the mustard family (Brassicaceae). As an annual, the seeds germinate in the fall, overwinter as rosettes, and commence a month-long flowering period beginning in mid-March. The first seeds mature in late April, and during most years the plants dry and drop all of their seeds by the end of May. It is unlikely that all seeds produced in spring germinate the next fall, but the length of dormancy in the soil is not known (McDaniel and Lyons 1987, p. 10); thus we do not know whether the species is capable of forming a seed bank. Native bees in the families' Andrenidae and Halictidae (sweat bees), including the species *Halictus ligatus* (sweat bee), were observed carrying pollen from *Leavenworthia crassa* (fleshy-fruit gladecress) and *L. alabamica* (Alabama gladecress) in northern Alabama (Lloyd 1965).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

Short's Bladderpod

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Shea (1993, pp. 22–23 and 42–92) and Tennessee Department of Environment and Conservation (2009, p. 1–3) discussed several threats that have destroyed or modified Short's bladderpod habitat and could cause further habitat loss or modification in the future. These include transportation right-of-way construction and maintenance; impoundments and reservoir water level manipulation; overstory shading due to forest succession; competition and shading from invasive, nonnative plant species; trash dumping; commercial and residential construction; and livestock grazing. Predictions of increased frequency, duration, and intensity of droughts across the species' range, and increased flooding in the Midwest region, could portend adverse effects for Short's bladderpod and its habitat. We discuss each of these threats in greater detail below.

Transportation Right-of-Way Construction and Maintenance

During the status survey for this species, Shea (1993, p. 22) observed that Short's bladderpod habitat at three sites (Kentucky EO 7; Tennessee EOs 7, 14) had been destroyed or degraded by road construction or maintenance activities. Neither of these Tennessee occurrences is extant today (TNHID 2012). Shea (1993, p. 60) observed 48 plants at Kentucky EO 7 in 1992, but noted that the population had been much more extensive prior to improvements of U.S. 421. Shea (1993, p. 22) also indicated that roadside maintenance posed a continuing threat to the species at this location. Although approximately 100 Short's bladderpod plants were observed on a steep slope above the road cut adjacent to Kentucky EO 7 in 2004 (KNHP 2012), no plants were found at the base of the bluff, where 21 plants had been observed in 1992 (Shea 1993, p. 60) before the road cut had altered the habitat. Poorly timed mowing or indiscriminate herbicide application along the road cut at the base of this bluff could cause mortality of seedlings produced there from seeds that are dispersed from the plants on the slope above. According to data from the KNHP (2012), a road cut was present in 2004, and no Short's bladderpod could be found at Kentucky EO 2, where in 1992 Shea (1993, p. 52) observed 11 Short's bladderpod plants and observed no apparent threats to the population. Much of the habitat downslope of a road, where Tennessee EO 20 once occurred but is no longer extant, was found to be covered with rip rap in 2008, and the remaining habitat above and below the road was overgrown (TDEC 2009, p. 10). Road construction destroyed suitable habitat around Tennessee EO 23, and Short's bladderpod is no longer present at the site (TNHID 2012). Based on these data, five Short's bladderpod occurrences (9 percent) have been lost to habitat destruction or modification associated with road construction or maintenance.

Shea (1993, p. 22) identified roadside maintenance as a threat to 12 occurrences, including two discussed above: Indiana EO 1; Kentucky EOs 1 through 4, 7, 19, and 23; and Tennessee EOs 2, 4, 10, and 22. In addition, Kentucky EO 27 is located along a mowed roadside (KNHP 2012), and TDEC (2009, p. 2) reported that Tennessee EOs 3 and 15 could be affected by roadside maintenance. Indiana EO 1 is an extant roadside occurrence, where the species' persistence depends on periodic clearing of competing vegetation and associated soil disturbance to prevent succession of the vegetation at the site to a forested condition that would be unsuitable for Short's bladderpod (Homoya, pers. comm., December 2012). Nonetheless, poorly timed mowing or indiscriminate herbicide application could negatively affect this occurrence by disrupting reproductive cycles or causing direct mortality of Short's bladderpod plants. In total, roadside maintenance has been identified as a threat to 15 occurrences.

Short's bladderpod is considered extirpated from four of the eight sites in Kentucky where roadside maintenance has been identified as a threat to the species. Neither Kentucky EO 2, lost to road construction as discussed above, nor EO 3 is extant. No plants were

found at Kentucky EO 3 during searches in 2004 and 2008; however, only a few plants had been observed here in 1994 and earlier (KNHP 2012), and the cause for the species' current absence is not known. Despite the presence of 17 Short's bladderpod plants at Kentucky EO 19 during 2005, none were found during visits in 2004 and 2011 (KNHP 2012). While roadside maintenance could have contributed to loss of this population, observations by Kentucky Natural Heritage Program (2012) indicate that shading or competition from invasive species is likely a primary cause. Short's bladderpod was last seen at Kentucky EO 27 in 1993, when seven plants were found along a mowed roadside dominated by fescue and other weeds (KNHP 2012). This occurrence was determined to be extirpated during a 2011 site visit by KNHP (2012) staff.

Short's bladderpod remains extant at four of the eight sites in Kentucky where roadside maintenance has been identified as a threat to the species. Kentucky EO 1 is considered extant, but only three Short's bladderpod plants—two in 1992, and one in 2009—have been observed at this site since the species was first observed there in 1975. Kentucky EO 4 was treated as two separate populations by Shea (1993, pp. 62–65), which are now tracked as a single occurrence (KNHP 2012). While some plants at the base of the cliff where Kentucky EO 4 is located are vulnerable to roadside mowing or herbicide application, many of the plants are on the cliff face and associated ledges, and no impacts from roadside maintenance have been documented. Short's bladderpod abundance at this occurrence has ranged from a low of approximately 56 individuals in 1998, to a high of at least 400 individuals in 2004 (KNHP 2012). As discussed above, there were approximately 100 plants observed above the road cut at Kentucky EO 7, but roadside maintenance could prevent plants from becoming established at the base of the road cut. Kentucky EO 23 has ranged in abundance from a low of 60 plants in 2008, to a high of at least 430 plants in 2001. In 2011, there were more than 500 seedlings present at this site, but no flowering plants were observed. While this occurrence is located near a roadside, there have been no documented impacts from roadside maintenance.

Short's bladderpod is considered extirpated from two of the seven sites in Tennessee where roadside maintenance has been identified as a threat to the species. At Tennessee EO 2, TDEC (2009, p. 5) found the habitat to be too overgrown and Short's bladderpod absent during a search in 1998, and no plants were found during a monitoring visit in 2008. As noted above, Short's bladderpod was no longer present when TDEC (2009, p. 10) observed in 2008 that the roadside habitat at Tennessee EO 20 had been covered with rip rap and the remaining habitat above and below the road was overgrown.

Short's bladderpod remains extant at five of the seven sites in Tennessee where roadside maintenance has been identified as a threat to the species. More than 500 Short's bladderpod plants were found at Tennessee EO 3 in 2008 (TDEC 2009, p. 6), where Shea (1993, p. 89) found 40 plants in 1992. This occurrence is located along a south-facing wooded slope, north of the Cumberland River, but very little of its habitat would be vulnerable to maintenance associated with the road right-of-way to the immediate west. Tennessee EOs 4 and 10 are located along a roadside approximately 0.5 km (0.3 mi) apart, and both occurrences are estimated to number in the hundreds to thousands of plants (TDEC 2009, p. 6–8). While roadside maintenance could adversely affect plants located along the base of the roadside bluffs on which they occur, the majorities of these occurrences are located on ledges and bluff tops where roadside maintenance would be unlikely to affect them. Tennessee EO 15 is a small occurrence located adjacent to a bridge, on a steep limestone bluff overlooking the Harpeth River. While no impacts from roadside maintenance have been observed, no more than 20 plants have ever been counted at this occurrence. Biologists from TDEC (2009, p. 11) found approximately 35 plants at Tennessee EO 22, where Shea (1993, p. 85) found 43 reproductive plants in 1992. No impacts from roadside maintenance were noted during this site visit.

Four Short's bladderpod occurrences (7 percent) apparently have been lost to road construction or roadside maintenance. While 10 of the known extant occurrences (38 percent) are located along roadsides, where maintenance activities such as mowing or herbicide application could affect them, there have been few documented examples of such effects. In many roadside locations, Short's bladderpod occurs on steep slopes or bluffs, where roadside maintenance would be unlikely to affect the species unless the road was widened, requiring alteration or removal of the slope or bluff. Moreover, well-timed and carefully executed right-of-way maintenance intended to control vegetation encroachment could be beneficial by reducing shading and competition. Nonetheless, the potential exists for road widening projects or vegetation management efforts along road rights-of-way to destroy or modify habitat, cause mortality of individual plants, or diminish reproductive output at a large proportion of sites where the species occurs.

There are seven extant Short's bladderpod occurrences, and three sites from which the species is thought to be extirpated, located in or adjacent to the Old Tennessee Central Railroad right-of-way (TDEC 2009, p. 3, TNHID 2012), portions of which are not actively used or maintained or have been sold to other rail companies. There were hundreds to thousands of Short's bladderpod plants each at three of these occurrences (Tennessee EOs 1, 10, and 17) when TDEC (2009, p. 4) monitored the species in 2008. The Nashville Area Metropolitan Planning Organization (NAMPO) (2010, p. 98) 2035 Regional Transportation Plan reported that the Old Tennessee Central Railroad, which follows the Cumberland River and passes through Ashland City, was found to be the most practical alignment for a proposed commuter rail to improve intercity commute options between the cities of Nashville and Clarksville, Tennessee. While no plans have been produced for developing this proposed commuter rail system, the 2035 Regional Transportation Plan states that this transportation option should be developed by 2017 (NAMPO 2010, p. 98). Habitat modification or destruction resulting from such development could potentially affect 27 percent of the known extant occurrences of the species, including some occurrences where the species is most abundant.

Flooding and Water Level Fluctuation

Shea (1993, pp. 22–23) and TDEC (2009, p. 2) noted that impoundments and artificial water level manipulation threatened several Short's bladderpod occurrences. This threat might be better characterized as flooding and water level fluctuation, regardless of cause, as some occurrences in free-flowing river reaches are vulnerable to this threat. For example, the Indiana occurrence is located near an oxbow lake that was created in a relict channel of the Wabash River, and it is periodically inundated by floodwaters from the river. In 2011, this occurrence was subjected to a prolonged flood that killed most of the Short's bladderpod plants at this location (Homoya, pers. comm., November 2012). There were thousands of seedlings present at this site in 2010, and this flood event likely eliminated the recruitment of most, if not all, of those seedlings into the population. At

least 100 plants were present at this site in 2012 (Homoya, pers. comm., November 2012); however, it is not known whether these were survivors of the flood or new plants that had sprouted from the seed bank.

There are seven Tennessee occurrences that TDEC (2009, p. 2) reported could be affected by water level manipulation. One of these, Tennessee EO 3, is located on a wooded slope above the upper reaches of waters impounded by Old Hickory Lake. There were more than 500 plants at this location in 2008, and the position of Short's bladderpod within the forested area above the zone of routine water level fluctuation is unlikely to be affected by manipulation of water levels in the lake. Shea (1993, p. 90) did not mention water level manipulation in her assessment of threats to this occurrence. Tennessee EO 20, also in the upper reaches of Old Hickory Lake, is presumed extirpated but was likely lost to placement of rip rap along the roadside where it occurs, as discussed above (please see Transportation Right-of-Way Construction and Maintenance). Tennessee EO 12 is located on bluffs overlooking the Cumberland River but not within an area managed as a reservoir or lake. Shea (1993, pp. 22–23) was unable to find this occurrence in 1992, and concluded that flooding at the base of the bluff was the cause. In 2008, TDEC (2009, p. 8) found approximately 50 plants at Tennessee EO 12, but they considered Short's bladderpod habitat to be vulnerable to flooding at this site due to water level fluctuation and the position of the plants at a low elevation on the bluff. Tennessee EOs 24 through 27 are found in soil at the river bank or on bedrock ledges within about 1.5 m (5 ft) of the waters of Cordell Hull Reservoir (TNHID 2012), but, with the exception of EO 27, no more than 10 plants have ever been counted at any of these sites. These three occurrences are vulnerable to the effects of water level fluctuation, as evidenced by observed erosion within the fluctuation zone (TNHID 2012). Tennessee EO 27 appears to be at little risk of habitat alteration due to water level fluctuation, as it is located on bluff ledges above the zone of routine water level fluctuation.

While the threat of flooding or water level fluctuation is present at only five extant occurrences (19 percent), one of these is the only Indiana population of the species, where the species has numbered in excess of 1,000 plants in the past (Homoya, pers. comm., November 2012). The four occurrences in Tennessee threatened by water level fluctuation are small and vulnerable to extirpation from even limited habitat alteration or inundation.

Overstory Shading

The most vigorous (Shea 1992, p. 24) and stable (TDEC 2009, p. 1) Short's bladderpod occurrences are found in locations where the canopy has remained relatively open over time. Overstory shading appears to have been a factor contributing to the disappearance of Short's bladderpod at three sites in Kentucky (EO numbers 9, 19, and 20) and one in Tennessee (EO 2) where Shea (1992, p. 4) observed heavy shading as a threat to the species in 1992. Overstory shading has been identified as a threat to Indiana EO 1 (INHDC 2012), Kentucky EO 22 (KNHP 2012), and Tennessee EOs 10, 21, and 24 (TNHID 2012), or 19 percent of known extant occurrences. Based on these data, canopy shading has been implicated as a factor contributing to the disappearance of Short's bladderpod from four sites and has been identified as a limiting factor at nearly one-fifth of remaining extant occurrences.

Competition With Nonnative Plant Species

Competition with or shading from invasive, nonnative herbaceous and shrub species are cited in notes concerning threats in database records for three of Kentucky's (EO numbers 4, 11, and 18) (KNHP 2012) and five of Tennessee's (EO numbers 8, 10, 22, 24, and 26) (TNHID 2012) extant Short's bladderpod occurrences. Homoya (pers. comm., December 2012) also lists invasive species among the threats affecting the single Indiana occurrence. The species most often mentioned by these agencies include *Lonicera japonica* (Japanese honeysuckle), *L. maackii* (bush honeysuckle), *Alliaria petiolata* (garlic mustard), and *Bromus tectorum* (downy brome grass); however, several other invasive, nonnative species occur in sites where Short's bladderpod exists, including *Ligustrum* spp. (privet), *Rosa multiflora* (multiflora rose), and *Glechoma hederacea* (ground ivy). Competition with or shading from these species adversely affects Short's bladderpod. While this threat has been specifically noted at approximately one-third of Short's bladderpod occurrences, it likely is more widespread among occurrences of the species and has not been reported in database records.

Trash Dumping

Shea (1993, p. 22) identified three Short's bladderpod sites at which trash dumping posed a threat (Kentucky EOs 1 and 19, Tennessee EO 20). The species is no longer found at two of these sites: Kentucky EO 19, where canopy shading has been implicated in the species' absence, and Tennessee EO 20, where most of the habitat for the species has been covered by rip-rap. While Short's bladderpod is presumed to be extant at Kentucky EO 1, there was only one plant found at this site in 2009 (KNHP 2012). The species was first collected at this site in 1957, and despite several site visits between then and 2009, only two plants were seen there in 1992 (KNHP 2012). TDEC (2009, p. 3) lists trash dumping as a general threat to Short's bladderpod, but provides no specific information to support this conclusion.

Livestock Grazing

Livestock grazing historically presented a threat to Short's bladderpod, but we are not aware of any threats currently posed by this land use. In addition to potentially causing direct harm to or loss of individual plants, livestock grazing on the steeply sloped sites where Short's bladderpod typically occurs could increase soil erosion, potentially uprooting individual plants and causing loss of the soil seed bank. Shea (1993, p. 22) identified three Kentucky sites (EOs 9, 20, and 21) at which livestock (goats or cows) grazing posed a threat to Short's bladderpod. None of these sites support the species today, likely due to multiple factors that degraded the habitat at those locations. In Tennessee, Shea (1993, p. 22) reported that EO numbers 15 and 21 were threatened by grazing. However, more recent data from TDEC (TNHID 2012) indicate that Short's bladderpod has remained relatively stable at these sites and grazing is not listed among threats observed at these locations.

Commercial and Residential Construction

While TDEC (2009, p. 3) lists commercial and residential construction among potential threats to Short's bladderpod, there is little documentation of these impacts. Tennessee EO 31, which is based on a single herbarium collection from 1979, was apparently lost due to construction activities at its location within the city of Clarksville (TNHID 2012). The only other reference we have found for this particular threat was an observation by TDEC (TNHID 2012) that an area in the vicinity of Tennessee EO 21 had been subdivided for residential construction on the bluffs overlooking Old Hickory Lake. Construction-related threats to Short's bladderpod could include direct destruction of habitat and the plants found there or the indirect effects of habitat alteration from sediment runoff

and encroachment of invasive, nonnative plant species from areas disturbed during construction.

Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007a, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

The Intergovernmental Panel on Climate Change (IPCC) concluded that evidence of warming of the climate system is unequivocal (IPCC 2007a, p. 30). Numerous long-term climate changes have been observed including changes in arctic temperatures and ice, widespread changes in precipitation amounts, ocean salinity, wind patterns and aspects of extreme weather including droughts, heavy precipitation, heat waves and the intensity of tropical cyclones (IPCC 2007b, p. 7). While continued change is certain, the magnitude and rate of change is unknown in many cases. Species that are dependent on specialized habitat types, are limited in distribution, or have become restricted to the extreme periphery of their range will be most susceptible to the impacts of climate change.

Estimates of the effects of climate change using available climate models lack the geographic precision needed to predict the magnitude of effects at a scale small enough to discretely apply to the range of Short's bladderpod. However, data on recent trends and predicted changes for the Southeast and Midwest United States (Karl *et al.* 2009, pp. 111–122) provide some insight for evaluating the potential threat of climate change to the species. Most of the range of Short's bladderpod lies within the geographic area included by Karl *et al.* (2009, pp. 111–122) in their summary of regional climate impacts affecting the Southeast region; however, the Indiana occurrence of the species lies in the Midwest region, just west of its boundary with the Southeast region.

Since 1970, the average annual temperature across the Southeast has increased by about 2 °F, with the greatest increases occurring during winter months. The geographic extent of areas in the Southeast region affected by moderate to severe spring and summer drought has increased over the past three decades by 12 and 14 percent, respectively (Karl *et al.* 2009, p. 111). These trends are expected to increase. Rates of warming are predicted to more than double in comparison to what the Southeast has experienced since 1975, with the greatest increases projected for summer months. Depending on the emissions scenario used for modeling change, average temperatures are expected to increase by 4.5 °F to 9 °F by the 2080s (Karl *et al.* 2009, p. 111). While there is considerable variability in rainfall predictions throughout the region, increases in evaporation of moisture from soils and loss of water by plants in response to warmer temperatures are expected to contribute to increased frequency, intensity, and duration of drought events (Karl *et al.* 2009, p. 112).

Projected increases in winter and spring rainfall for the Midwest region, as well as predictions of more intense rainfall events throughout the year, are expected to lead to more frequent flooding. Despite these projected trends, the likelihood of drought is expected to increase in the Midwest due to warming-induced increases in evapotranspiration rates and longer intervals between precipitation events (Karl *et al.* 2009, pp. 120–121).

Depending on timing and intensity of drought events, Short's bladderpod could be adversely affected by increased mortality rates, reduced reproductive output due to loss or reduced vigor of mature plants, and reduced rates of seed germination and seedling recruitment. The species' presumed ability to form a seed bank should provide some resilience to drought-induced population declines; however, multiple droughts in successive years could diminish this resilience and lead to the loss of occurrences. Conversely, increased drought frequency and severity could alter structure of vegetation communities in which Short's bladderpod occurs by slowing rates of forest canopy development, increasing tree mortality, and increasing light availability for the species, which could stimulate recruitment from dormant seed banks and increase vigor of plants located in areas that are presently well-shaded. The predicted increase in flood frequency in the Midwest could place the Indiana population of the species at risk, as evidenced by the loss of large numbers of seedlings during a prolonged flood at this site in 2011. While climate has changed in recent decades in regions where Short's bladderpod occurs and the rate of change likely will continue to increase into the future, we do not have data to determine how the habitats where Short's bladderpod occurs will be affected by these changes and how the species will respond to these changes.

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

There have been limited conservation efforts directed towards reducing threats affecting Short's bladderpod and its habitat. The Indiana Department of Natural Resources acquired the single Indiana occurrence. IDNR controls competing vegetation by mowing along the roadside where Short's bladderpod occurs and attempts to stimulate germination and seedling recruitment with light soil disturbance. The species has responded positively, at least in the short term, to this management (Homoya, pers. comm., December 2012). In Kentucky, a Landowner Incentive Program grant was used to manage vegetation structure or control invasive species at two occurrences in 2005. The effort to control bush honeysuckle at Kentucky EO 19 provided only a short-term benefit, if any, for Short's bladderpod, as bush honeysuckle is again well established at this site. During 2011, no Short's bladderpod plants could be found at this site, and the occurrence is presumed extirpated. The removal of cedar trees at Kentucky EO 23 appears to have positively affected habitat conditions for Short's bladderpod, as there were more than 500 plants, mostly seedlings, observed at the site in 2011. The Kentucky State Nature Preserve Commission acquired lands to establish the Rockcress Hills State Nature Preserve, where Kentucky EO 22 is located and where the federally listed endangered Braun's rockcress (listed as *Arabis perstellata,* but now recognized as *Boechera perstellata*) also occurs. As discussed above, this occurrence is threatened by shading due to forest canopy development. These conservation efforts have benefited three

extant Short's bladderpod occurrences, but significant habitat threats remain across the species' range.

Summary of Factor A

The threats to Short's bladderpod from habitat destruction and modification are occurring throughout the entire range of the species. These threats include transportation right-of-way construction and maintenance; flooding and water level fluctuation; overstory shading; and competition with nonnative plant species. The population level impacts from these activities are expected to continue into the future. Trash dumping, livestock grazing, and commercial and residential construction have been recognized as threats to habitat for this species, but there is little evidence that these are significant threats to extant occurrences.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There has been limited collection of Short's bladderpod seed for conservation purposes. The Missouri Botanical Garden holds seed accessions from the Indiana occurrence, four Kentucky occurrences (EOs 4, 18, 19, and 28), and two Tennessee occurrences (EOs 4 and 17). Kentucky EO 19 is no longer extant, for reasons discussed above, but Short's bladderpod is still found at all of the other occurrences from which these accessions were collected. Dr. Carol Baskin (pers. comm., December 2012) collected seeds from Indiana for research on seed ecology. We are not aware of commercial trade in Short's bladderpod at this time. Indiscriminate collecting for scientific or other purposes could be a threat to the species due to the low numbers of individuals at most occurrences, but we have no data to indicate that indiscriminate collecting of Short's bladderpod has occurred. On the contrary, collections for *ex situ* conservation holdings could be an important component of future recovery efforts for the species.

C. Disease or Predation

We are not aware of any commercial or scientific data indicating that disease or predation threatens the continued existence of Short's bladderpod.

D. The Inadequacy of Existing Regulatory Mechanisms

Section 4(b)(1)(A) of the Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species. . . .'' In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and tribal laws, plans, regulations, and other such mechanisms that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. An example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

Having evaluated the significance of the threat as mitigated by any such conservation efforts, we analyze under Factor D the extent to which existing regulatory mechanisms are inadequate to address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the impacts from one or more identified threats. In this section, we review existing State and Federal regulatory mechanisms to determine whether they effectively reduce or remove threats to Short's bladderpod.

Short's bladderpod is listed as endangered in Indiana, Kentucky, and Tennessee. In Indiana this listing does not provide legal protection for the species; although, listed species are given special consideration when planning government-funded projects. Additionally, the Indiana site is located on land owned by the IDNR where collection or damage to plants is prohibited.

The Kentucky Rare Plants Recognition Act, Kentucky Revised Statutes (KRS), chapter 146, section 600–619, directs the KSNPC to identify plants native to Kentucky that are in danger of extirpation within Kentucky and report every 4 years to the Governor and General Assembly on the conditions and needs of these endangered or threatened plants. This list of endangered or threatened plants in Kentucky is found in the Kentucky Administrative Regulations, title 400, chapter 3:040. The statute (KRS 146:600–619) recognizes the need to develop and maintain information regarding distribution, population, habitat needs, limiting factors, other biological data, and requirements for the survival of plants native to Kentucky. This statute does not include any regulatory prohibitions of activities or direct protections for any species included in the list. It is expressly stated in KRS 146.615 that this list of endangered or threatened plants shall not obstruct or hinder any development or use of public or private land. Furthermore, the intent of this statute is not to ameliorate the threats identified for the species, but it does provide information on the species.

The Tennessee Rare Plant Protection and Conservation Act of 1985 (T.C.A. 11–26–201) authorizes the Tennessee Department of Environment and Conservation (TDEC) to, among other things: conduct investigations on species of rare plants throughout the state of Tennessee; maintain a listing of species of plants determined to be endangered, threatened, or of special concern within the state; and regulate the sale or export of endangered species via a licensing system. This act forbids persons from knowingly uprooting, digging, taking, removing, damaging, destroying, possessing, or otherwise disturbing for any purpose, any endangered species from private or public lands without the written permission of the landowner, lessee, or other person entitled to possession and prescribes penalties for violations. The TDEC may use the list of threatened and special concern species when commenting on proposed public works projects in Tennessee, and the department shall encourage voluntary efforts to prevent the plants on this list from becoming endangered species. This authority shall not, however, be used to interfere with, delay, or impede any public works project.

Thus, despite the fact that Short's bladderpod is listed as endangered by the states of Indiana, Kentucky, and Tennessee, these designations confer no guarantee of protection to the species or its habitat, whether on privately owned or state-owned lands, unless such protections are voluntarily extended to the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The ability of populations to adapt to environmental change is dependent upon genetic variation, a property of populations that derives from its members possessing different forms (i.e., alleles) of the same gene (Primack 1998, p. 283). Small populations occurring in isolation on the landscape can lose genetic variation due to the potentially strong influence of genetic drift, i.e., the random change in allele frequency from generation to generation (Barrett and Kohn 1991, p. 8). Smaller populations experience greater changes in allele frequency due to drift than do larger populations (Allendorf and Luikart 2007, pp. 121–122). Loss of genetic variation due to genetic drift heightens susceptibility of small populations to adverse genetic effects, including inbreeding depression and

loss of evolutionary flexibility (Primack 1998, p. 283). Deleterious effects of loss of genetic variation through drift have been termed drift load, which is expressed as a decline in mean population performance of offspring in small populations (Willi *et al.* 2005, p. 2260).

The likelihood that Short's bladderpod is self-incompatible presents another threat related to small population sizes. Genetic incompatibility prevents self-fertilization or reduces successful breeding among closely related individuals, which can decrease mean fitness in small populations because of increased probability of an encounter of two incompatible haplotypes (specific combination of alleles at adjacent locations (loci) on the chromosome that are inherited as a unit) (Willi *et al.* 2005, p. 2256), which would prevent seed production in self-incompatible plants. In small populations, less common S-haplotypes (self-incompatibility haplotypes) might be easily lost due to genetic drift, reducing the number of compatible mates within the population (Byers and Meagher 1992, p. 356).

In self-incompatible plants of the Brassicaceae family, when pollen and stigma share S-haplotypes at the S-locus (self-incompatibility locus, i.e., the position on a chromosome occupied by the self-incompatibility gene complex), pollen tube development is disrupted on the stigma of the female reproductive system (Takayama and Isogai 2005, p. 469). The stigma is the receptive structure of the female reproductive system in plants, which also includes the pistil and ovary, on which pollen grains germinate and begin development of the pollen tube. Pollen tube formation is necessary for fertilization of the ovary and subsequent seed production to occur.

Despite the presence of such a mechanism functioning to reduce or eliminate reproductive output among individuals sharing S-haplotypes, in small populations mating is likely to occur among individuals that possess different S-haplotypes but are genetically similar at other loci due to loss of alleles from the population through genetic drift (Byers and Meagher 1992, p. 358). Mating between such closely related individuals is referred to as inbreeding. Inbreeding rates are higher in small populations because most or all individuals in the population are related, and inbred individuals generally have reduced fitness as compared to non-inbred individuals from the same population, a phenomenon referred to as inbreeding depression (Allendorf and Luikart 2007, p. 306).

Evidence in plants of inbreeding depression due to small population size is provided by Heschel and Paige (1995, p. 128), who found that plants from populations of *Ipomopsis aggregata* (scarlet gilia) with 100 or fewer flowering individuals produced smaller seeds with lower rates of germination success compared to those from populations with more than 100 flowering individuals. Heschel and Paige (1995, p. 131) also found that seed sizes increased and germination success improved in response to transfer of pollen into each of the small populations, which they interpreted as evidence that the reduced fitness observed in small populations was attributable, in part, to inbreeding depression.

Willi *et al.* (2005, pp. 2263) found evidence of the three processes described above (reduced cross-compatibility presumably due to lack of compatible mates carrying different S-haplotypes, reduced fitness due to inbreeding, and drift load due to loss of genetic variation) simultaneously affecting small populations of a plant, *Ranunculus reptans* (creeping buttercup). Populations with low allelic diversity, taken as an indication of long-term small population size, had higher inbreeding levels. Inbreeding depression in these populations was expressed as poor clonal performance and reduced seed production in offspring (F1 plants) produced by crosses between plants with high kinship coefficients. Drift load also was expressed as a reduction in mean seed production of F1 plants in long-term small populations (Willi *et al.* 2005, p. 2260).

In evaluating threats to Short's bladderpod that could arise due to small population size, we first evaluated the limited data available concerning abundance at each of the occurrences across the species' range. This represents a conservative classification of small population size, as available data typically do not discriminate among life history stages, so the number of reproducing individuals is typically less than what is shown in the abundance data in Table 1 (see *Distribution and Status* for the Short's bladderpod, above). Less than 100 individual plants have ever been observed at one time at 12 (46 percent) of the extant occurrences in Kentucky (EOs 1, 11, and 28) and Tennessee (EOs 8, 12, 15, 22, 24, 26, 27, 29, and 30). The greatest number of plants ever observed at the small Kentucky occurrences ranged from 2 at EO 1 to 52 at EO 11 (KNHP 2012). At the small Tennessee occurrences, maximum recorded abundance ranged from 3 clusters of plants at EO 26 to approximately 50 plants each at EOs 8, 12, 22, 27, and 29 (TNHID 2012). These small populations are at risk of adverse effects from reduced genetic variation and associated drift load, increased risk of inbreeding depression, and reduced reproductive output due to low availability of genetically compatible mates. Many of these occurrences where population sizes are small are isolated from other occurrences, decreasing the likelihood that they could be naturally reestablished via seed dispersal, in the event that local extinction occurred.

Cumulative Effects From Factors A through E

Where two or more threats affect Short's bladderpod occurrences, the effects of those threats could interact or be compounded, producing a cumulative adverse effect that rises above the incremental effect of either threat alone. The most obvious cases in which cumulative adverse effects would be significant are those in which small populations (Factor E) are affected by threats that result in destruction or modification of habitat (Factor A). Two occurrences in Kentucky and six in Tennessee where small population size was identified as a threat also face threats to their habitats, as discussed under Factor A above. The vulnerability of these occurrences to habitat modification or destruction is heightened by effects of small population size discussed above, reduced resilience to recover from acute demographic effects of habitat disturbances, and low potential for recolonization due to isolation from other occurrences.

Whorled Sunflower

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Whorled sunflower appears to be a narrow habitat specialist, occurring in natural wet meadows or prairies and calcareous barrens. Such habitats likely were more extensive in the eastern United States before European settlement, subsequent fire suppression, and conversion of habitat to cropland or residential areas (Allison 1995, p. 7). Today these prairie areas are not very extensive, and they often are degraded or have been destroyed for a number of reasons. Most remaining prairie vegetation in the geographic area where whorled sunflower occurs exists as remnants along roadside and utility rights-of-way, where prairie-like

conditions are artificially maintained (Allison 1995, p. 4). Where whorled sunflower habitat remains, it faces threats due to indiscriminate use of mechanical or chemical vegetation management for industrial forestry, right-of-way maintenance, or agricultural purposes that could adversely affect it. Because the species requires well-lit habitats for its growth and reproduction, shading and competition due to vegetation succession in the absence of natural or human-caused disturbance also threaten whorled sunflower habitat.

Industrial Forestry Practices

Industrial forestry practices have altered much suitable whorled sunflower habitat in Georgia and Alabama, and currently threaten one known subpopulation in Alabama. While surveying potential habitat for additional populations, J. Allison (Botanist, Georgia Department of Natural Resources, pers. comm., March 1999) observed that much of this species' prairie habitat in Georgia had been converted to pine plantations. Nearly all of the Georgia subpopulations and one of the Alabama subpopulations of whorled sunflower are located on lands that currently are owned by The Campbell Group, a timberland investment advisory firm. The Georgia subpopulations on The Campbell Group's lands are protected from habitat destruction or degradation by their inclusion in the conservation easement area at the Coosa Valley Prairie, which was donated to The Nature Conservancy by the Temple-Inland Corporation, the former owner of these lands.

With the exception of the conservation easement area at the Coosa Valley Prairie, The Campbell Group typically subsoil plows planting sites to improve drainage and conditions for tree root development, and uses mechanical or chemical methods to control competing vegetation when preparing sites for planting pine seedlings (J. King, Area Manager, The Campbell Group, LLC, pers. comm., August 2012) on its lands in Floyd County, Georgia, and Cherokee County, Alabama. These practices could cause direct mortality of whorled sunflower plants at one of the Alabama subpopulations and could contribute to habitat degradation caused by shading and competition (please see ''Shading and Competition'' below) by improving conditions for growth of planted pines. During timber harvests, either to thin (i.e., reduce density of pine trees in order to improve growth conditions for remaining trees) or to clearcut the stand, whorled sunflower plants at this subpopulation could be subjected to indirect adverse effects from soil disturbance or to direct mortality due to movement of harvesting equipment.

Right-of-Way Maintenance

Incompatible maintenance activities in transportation rights-of-way have adversely affected the whorled sunflower in Alabama and Tennessee, and could affect one subpopulation in Georgia. At one of the Alabama subpopulations, the whorled sunflower occurs in a narrow strip of vegetation between a roadside and adjacent pine forest, where it is vulnerable to mortality or reduced vigor and reproductive output due to indiscriminate use of herbicides or mowing for right-of-way maintenance. Poorly timed mowing of this right-of-way prevented flowering and seed production in some plants at this site in 2008; however, the Alabama Department of Conservation and Natural Resources, Alabama Department of Transportation, and Cherokee County Highway Department cooperated in placing signs at the site to mark the presence of whorled sunflower and to attempt to prevent this in the future (W. Barger, Botanist, Alabama Department of Conservation and Natural Resources, pers. comm., February 2009); periodic replacement might be needed due to vandalism or removal of the signs (Barger, pers. comm., March 2012). Regular coordination with parties responsible for roadside maintenance at this location will be necessary to avoid future adverse effects to the whorled sunflower from indiscriminate mowing or herbicide application.

Plants extending onto a roadside within a powerline right-of-way at the Madison County, Tennessee, population were subjected to herbicide spraying in association with roadside and powerline maintenance in 2004, causing significant mortality (A. Bishop, Botanist, TDEC, pers. comm., February 2008; D. Lincicome, Natural Heritage Program Manager, TDEC, pers. comm., September 2006). Similarly, plants extending into the railroad right-of-way at the McNairy County, Tennessee, population are vulnerable to adverse effects from indiscriminate herbicide application for railroad right-of-way maintenance. A small cluster of plants in one of the Georgia's subpopulations is located on the bank of a road adjacent to the Coosa Valley Prairie easement area and is not protected. These data indicate that effects of indiscriminate use of herbicides or mowing for vegetation management in transportation rights-of-way could adversely affect the whorled sunflower populations in Alabama and Tennessee, as well as a small subpopulation in Georgia.

Agricultural Practices and Land Conversion

The whorled sunflower has not been rediscovered at the type locality in Tennessee despite intensive surveys of that area (Nordman 1998, p. 1–2). However, this record is from an 1892 collection and locality information is vague, so it is not possible to determine why this population has been lost. In Tennessee, much of this species' suitable habitat presumably has been converted for agricultural use, as substantial proportions of the counties in the State where the species have been found have been in row crop production since 1850 (Table 5) (Waisanen and Bliss 2002; GIS data available at *http://landcover.usgs.gov/cropland,* accessed January 9, 2013). Because this species was not seen following the initial 1892 collection until it was rediscovered in 1994, and was not seen again in Tennessee until 1998, it is impossible to know the historical distribution and abundance of its habitat. However, the data in Table 5 indicate that land conversion to agricultural uses has a long and sustained history in the Tennessee counties where the whorled sunflower has been found and likely has contributed to loss of habitat and whorled sunflower populations.

TABLE 5—PROPORTIONS OF COUNTY LAND BASE CONSIDERED IMPROVED FARMLAND FOR TENNESSEE COUNTIES WHERE THE WHORLED SUNFLOWER HAS BEEN FOUND. REPORTED HERE FOR EACH COUNTY ARE THE HIGHEST AND LOWEST PROPORTIONS ON RECORD FOR EACH COUNTY AND THE YEARS IN WHICH THEY OCCURRED AND VALUES FOR THE YEARS 1850 AND 1997, THE FIRST AND LAST YEARS INCLUDED IN WAISANEN AND BLISS (2002).

County	High (year)	Low (year)	1850	1997
Chester	37 (1940)	18 (1850)	18	23
Madison	54 (1949)	23 (1870)	28	29

TABLE 5—PROPORTIONS OF COUNTY LAND BASE CONSIDERED IMPROVED FARMLAND FOR TENNESSEE COUNTIES WHERE THE WHORLED SUNFLOWER HAS BEEN FOUND. REPORTED HERE FOR EACH COUNTY ARE THE HIGHEST AND LOWEST PROPORTIONS ON RECORD FOR EACH COUNTY AND THE YEARS IN WHICH THEY OCCURRED AND VALUES FOR THE YEARS 1850 AND 1997, THE FIRST AND LAST YEARS INCLUDED IN WAISANEN AND BLISS (2002).—Continued

County	High (year)	Low (year)	1850	1997
McNairy	33 (1920)	14 (1850)	14	20

Agricultural practices, including field preparation, herbicide use, and harvesting of crops, are threats to both of the known Tennessee populations, due to the species' presence in habitats adjacent to actively farmed crop fields in both locations. In July 2009, TDEC biologists observed that one clump consisting of two whorled sunflower stems had been destroyed by row crop cultivation in a previously fallow field at the McNairy County, Tennessee, population. Unpaved access roads around the perimeter of this field had also been widened, encroaching on whorled sunflower plants (7 clumps, 140 stems) in an adjacent railroad right-of-way (Bishop, pers. comm., March 2010). With the exception of the approximately 1-ha (2.5-ac) patch of old field habitat discussed above (see *Habitat* for the whorled sunflower, above), the Madison County, Tennessee, whorled sunflower population is distributed in narrow strips of vegetation along borders of row crop fields and is vulnerable to mechanized disturbance of these habitats or to effects from herbicide application. Based on this information we conclude that habitat at both whorled sunflower populations in Tennessee face significant threats associated with agricultural practices used in row crop production.

Shading and Competition

Absent natural or human-caused disturbance, habitats where whorled sunflower occurs are threatened by succession of vegetation to a shrub-dominated or forested condition. The largest concentration of plants at the Madison County, Tennessee, population is located in a successional old field approximately 1 ha (2.5 ac) in size, where vegetation succession threatens to degrade the largest patch of contiguous habitat where the majority of this population occurs. Woody species present at this site include *Acer negundo* (box elder), *Liquidambar styraciflua* (sweetgum), and *Salix nigra* (black willow) (Tennessee Division of Natural Areas 2006, p. 5), all of which can rapidly invade moist old field habitats if left unmanaged. No conservation agreements or management plans are in place to ensure that this site receives periodic disturbance to maintain open conditions needed for the growth and sexual reproduction of whorled sunflower.

The Alabama subpopulation on The Campbell Group's lands is located in a site where the prior owner, Temple-Inland Corporation, harvested an immature hardwood forest in 1998. Initially this timber harvest was thought to have adversely affected the whorled sunflower population, but these plants and associated prairie species responded favorably within a few years following the harvest. However, the site was subsequently converted into a loblolly pine plantation, and the trees have attained sufficient size and density to threaten whorled sunflower plants due to increased shading and competition (Schotz 2011, p. 4). As of 2012, there were few whorled sunflower plants present at this site, and those present were in a suppressed, vegetative condition due to strong shading and competition from planted pines and vegetation growing in the understory. Encroachment by invasive, nonnative plants following the timber harvest and establishment of the loblolly pine stand also is a threat at this site (Schotz 2011, p. 12). The second Alabama subpopulation is relegated to a narrow strip of vegetation between a roadside and adjacent pine forest with a densely vegetated understory. The spatial extent of this subpopulation is limited by the whorled sunflower's inability to grow in the shaded habitat of the adjacent forest.

Based on this information we conclude that habitat degradation due to shading and competition resulting from vegetation succession currently is a significant threat to two whorled sunflower populations. Both of the Alabama subpopulations and the largest contiguous patch of suitable occupied habitat for the species in Tennessee are at risk from this threat.

Climate Change

We discuss the topic of climate change in greater detail above in the Factor A threats analysis for Short's bladderpod, which is also applicable to whorled sunflower. Since 1970, the average annual temperature across the Southeast has increased by about 2 °F, with the greatest increases occurring during winter months. The geographic extent of areas in the Southeast region affected by moderate to severe spring and summer drought has increased over the past three decades by 12 and 14 percent, respectively (Karl *et al.* 2009, p. 111). These trends are expected to increase. Rates of warming are predicted to more than double in comparison to what the Southeast has experienced since 1975, with the greatest increases projected for summer months. Depending on the emissions scenario used for modeling change, average temperatures are expected to increase by 4.5 °F to 9 °F by the 2080s (Karl *et al.* 2009, p. 111). While there is considerable variability in rainfall predictions throughout the region, increases in evaporation of moisture from soils and loss of water by plants in response to warmer temperatures are expected to contribute to increased frequency, intensity, and duration of drought events (Karl *et al.* 2009, p. 112).

The predicted increase in drought frequency, intensity, and duration could adversely affect the moist prairie habitats inhabited by whorled sunflower, by reducing soil moisture and increasing sunflower mortality rates or reducing flowering and seed production rates. A positive effect of increased drought could result from increased mortality of woody vegetation and reduced rates of vegetation succession, which diminishes habitat abundance and quality for whorled sunflower. While climate has changed in recent decades in the region where whorled sunflower occurs and the rate of change likely will continue to increase into the future, we do not have data to determine how the habitats where the whorled sunflower occurs will be affected by these changes and how the species will respond to these changes.

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

Temple-Inland Corporation donated a conservation easement for the Coosa Valley Prairie property in Georgia to The Nature Conservancy, thereby

protecting most of the Georgia population of this species. This site drains into the headwaters of Mud Creek. In 2002, The Georgia Department of Natural Resources and The Nature Conservancy worked with staff of Temple-Inland to develop a 10-year management plan for conservation of rare species within this easement area. Site-specific management plans for several open wet prairies, known to provide habitat for this species within the easement, were developed. Temple-Inland implemented a prescribed burn and selective timber harvest on 243 ha (600 ac) of the easement in 2001, to improve habitat conditions for whorled sunflower and other species. Temple-Inland conducted additional burns within the easement area between 2002 and 2006. Mechanical thinning and control of invasive, exotic plants was also a component of their management of this site.

This easement area, now owned by The Campbell Group, is cooperatively managed with The Nature Conservancy based on a jointly developed conservation management plan, which was revised in 2012, for the period extending through 2016. The management goals for the site are based on the conservation easement and include long-term perpetuation and restoration of the mosaic of prairies, woodlands, wetlands, creeks, and forest while allowing for sustainable timber harvesting. Protecting and enhancing native plant communities, especially those supporting rare species, is the primary management objective, and periodic timber harvesting is a secondary objective. Portions of the tract either have been or will be planted into *Pinus palustris* (longleaf pine) as part of the Longleaf Alliance partnership. Prescribed fire is the primary management tool used to perpetuate and restore the native plant communities and also serves silvicultural objectives.

Despite the existence of a conservation plan and the cooperative partnership between The Nature Conservancy and The Campbell Group to implement the plan, management with prescribed fire is not a binding condition of the conservation easement. Thus, the potential remains that this management could be discontinued in the event that the property was sold to a less cooperative landowner.

Summary of Factor A

The threats to whorled sunflower from habitat destruction and modification are occurring throughout the entire range of the species. These threats include mechanical or chemical vegetation management associated with industrial forestry practices, maintenance of transportation and utility rights-of-way, agricultural practices, and shading and competition. While a conservation easement and suitable habitat management alleviate threats from industrial forestry that otherwise would adversely affect the Georgia population, one of the Alabama whorled sunflower subpopulations currently is threatened by industrial forestry practices. The population-level impacts from these activities are expected to continue into the future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The whorled sunflower currently is of limited availability in the horticultural trade, although no negative impacts are known to have occurred due to collection of wild material for commercial sale. Nonetheless, the conspicuous, attractive flowers of this species combined with easy access of some sites leaves the species vulnerable to collection or poaching. Poaching from the small populations of whorled sunflower that are known to exist could contribute to altered demographic or genetic structure of populations, potentially diminishing their viability; however, we have no information to suggest this currently is an active threat or has adversely affected populations in the past.

C. Disease or Predation

We are not aware of any commercial or scientific data indicating that disease or predation threatens the continued existence of whorled sunflower.

D. The Inadequacy of Existing Regulatory Mechanisms

Whorled sunflower is State-listed as endangered in Georgia and Tennessee, but has no official State status in Alabama. The law that provides official protection to designated species of plants in Georgia is known as the Wildflower Preservation Act of 1973 (O.C.G.A. 12–6–170). Under this law, no protected plant may be collected without written landowner permission. No protected plant may be transported within Georgia without a transport tag with a permit number affixed. Permits are also used to regulate a wide array of conservation activities, including plant rescues, sale of protected species, and propagation efforts for augmentation of natural populations and establishment of new ones. No protected plants may be collected from State-owned lands without the express permission of the Georgia Department of Natural Resources. The Georgia Environmental Policy Act (GEPA; O.C.G.A. 12–16–1), enacted in 1991, requires that impacts to protected species be addressed for all projects on State-owned lands, and for all projects undertaken by a municipality or county if funded half or more by State funds, or by a State grant of more than $250,000. The provisions of GEPA do not apply to actions of nongovernmental entities. On private lands, the landowner has ultimate authority over what protection efforts, if any, occur with regard to protected plants (Patrick *et al.* 1995, p. 1 of section titled ''Legal Overview'').

The Tennessee Rare Plant Protection and Conservation Act of 1985 (T.C.A. 11–26–201) authorizes the Tennessee Department of Environment and Conservation (TDEC) to, among other things: conduct investigations on species of rare plants throughout the state of Tennessee; maintain a listing of species of plants determined to be endangered, threatened, or of special concern within the state; and regulate the sale or export of endangered species via a licensing system. This act forbids persons from knowingly uprooting, digging, taking, removing, damaging, destroying, possessing, or otherwise disturbing for any purpose, any endangered species from private or public lands without the written permission of the landowner, lessee, or other person entitled to possession and prescribes penalties for violations. The TDEC may use the list of threatened and special concern species when commenting on proposed public works projects in Tennessee, and the department shall encourage voluntary efforts to prevent the plants on this list from becoming endangered species. This authority shall not, however, be used to interfere with, delay, or impede any public works project.

Thus, despite the fact that whorled sunflower is listed as endangered by the states of Georgia and Tennessee, these designations confer no guarantee of protection to the species or its habitat, whether on privately owned or state-owned lands, unless such protections are voluntarily extended to the species by owners or managers of lands where the species is present.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The whorled sunflower is vulnerable to localized extinction because of its extremely restricted distribution and small population sizes at most known locations, which reduces the resilience of these populations to recover from acute demographic effects of threats to its habitat discussed above under Factor A. Whorled sunflower is dependent

upon existence of prairie-like openings or remnant roadside prairie habitats for its survival. Alteration or elimination of disturbance processes that maintain these openings could result in the extinction of populations of this species. Further, the highly fragmented distribution of populations within Tennessee, combined with their disjunct location with respect to those in Georgia and Alabama, presumably precludes gene flow among them and leaves little chance of natural recolonization of these populations in the event of localized extinctions.

Small population size could be affecting reproductive fitness of the whorled sunflower. The findings of Ellis and McCauley (2008, entire) suggest that the Madison County, Tennessee, population is reproductively less fit than the Alabama population. Ellis and McCauley (2008, p. 1840) offered two possible explanations for reduced reproductive fitness of the Tennessee population, including limited mate availability due to limited diversity of self-incompatibility alleles, or more extensive inbreeding. Both could be contributing to reduced seed production and viability rates.

Ellis and McCauley (2008, pp. 1837–1838) could not assess the fitness of the Georgia population because seed heads collected for the study contained very few viable achenes, which produced poor germination rates. However, the lack of viable achenes in seed heads collected for this study suggests that poor reproductive fitness could be a threat in this population, as well.

Cumulative Effects From Factors A through E

Where two or more threats affect whorled sunflower populations, the effects of those threats could interact or be compounded, producing a cumulative adverse effect that rises above the incremental effect of either threat alone. Cumulative adverse effects are likely significant for whorled sunflower because all of the populations are small and their reproductive fitness is likely diminished (Factor E), and the Alabama and Tennessee populations are affected by threats that result in destruction or modification of habitat (Factor A). The vulnerability of these occurrences to habitat modification or destruction is heightened by the effects of small population size discussed above, reduced resilience to recover from acute demographic effects of these disturbances, and low potential for recolonization due to isolation from other occurrences.

Fleshy-Fruit Gladecress

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

This species is endemic to cedar glade areas in north-central Alabama that have been significantly altered from their original condition. More than a 50 percent loss in glade habitat has occurred since European settlement (Hilton 1997), with resulting glade habitats reduced to remnants fragmented by agriculture and development. Hilton (1997) conducted a thorough survey of cedar glade communities in northern Alabama using historical records, soil maps, topographic maps, geology, and aerial photography; 22 high priority glades were identified. However, field surveys found only five of these to be in good condition and restorable, and only two of these were considered high-quality sites (Hilton, pers. comm., 1999).

Agricultural Practices

At four of the fleshy-fruit gladecress populations, plants occur in pasture areas, on roadside rights-of-way, and/or in planted fields surrounded by agriculture or residential developments (Hilton 1997, pp. 13–27). Periodic disturbance, such as plowing in row crop farming, arrests succession and maintains populations in this type of habitat; however, plowing or herbicide application in the spring prior to seed set and dispersal could be detrimental to populations. Populations are enhanced by disturbance created from light grazing, but heavy grazing of pastures creates unfavorable conditions (i.e., soil compaction, nutrient enrichment) for fleshy-fruit gladecress. Plants have been severely trampled where grazing is allowed during the height of the plant's flowering or fruiting period. Grazing during the reproductive period also reduces vigor of the populations (Schotz, 2009, p. 2). Improving pastures with fertilizer treatments or planting of forage grasses could eventually result in loss of populations due to competition. Lyons (in litt. 1981 to R. Sutter) considered that her failure to relocate many of the historical fleshy-fruit gladecress sites from the 1960s was due to the change in agricultural practices from growing corn to using those sites for cattle pastures. McDaniel and Lyons (1987, p. 11) considered the trend toward converting agricultural sites from row crop cultivation to pasture as a primary threat to the species.

Transportation Right-of-Way Maintenance

Five of the six fleshy-fruit gladecress occurrences extend onto roadsides or are near roads, where mowing and herbicide application prior to seed set pose threats to the species. Three historical sites near roads have not been relocated and a portion of one of the extant populations was destroyed by road widening and grading in the 1980s (McDaniel and Lyons 1987, p. 7–9). Additional road widening at this site in recent years has further reduced the size of this population (Schotz 2009, p. 14). The largest population of this species has a dirt road traversing through a portion of the site, which has made the site vulnerable to off-road vehicles and dumping (Hilton 1997, p. 31). Other sites have also been negatively affected by trash dumping and off-road vehicles, including the site on U.S. Forest Service land. The U.S. Forest Service has posted the area as closed and recently gated the area to block all-terrain vehicle access to the site (T. Counts, U.S. Forest Service, in litt. 2008), which appears to have been effective at reducing damage to the glade (A. Cochran, U.S. Forest Service, in litt. 2005, Schotz in litt. 2007). The U.S. Forest Service continues to monitor the glade site for impacts from recreational vehicles and from other illegal vehicle activity (A. Cochran, pers. comm., 2011).

Shading and Competition

Winter annuals, such as fleshy-fruit gladecress, are excluded from many habitats because they are poor competitors (Baskin and Baskin 1985, p. 387). As with all annuals, this species' long-term survival at a locality is dependent upon its ability to reproduce and reseed there every year. Thus, populations decline and become at risk of local extinction if conditions remain unsuitable for reproduction for successive years. The most vigorous populations of the fleshy-fruit gladecress are located in areas which receive full, or near full, sunlight at the canopy level and have limited herbaceous competition (Hilton 1997, p. 5). Rollins (1963, p. 17) documented the loss of fleshy-fruit gladecress individuals caused by invading grasses in an unweeded portion of an experimental plot, while fleshy-fruit gladecress individuals in the hand-weeded part of the plot thrived. Hilton (1997, p. 12) was unable to relocate five populations in abandoned fields and pastures, which McDaniel and Lyons (1987, p. 7–9) had noted as appearing suppressed due to competition from invading weedy species.

Shading and competition are potential threats at the two largest populations of fleshy-fruit gladecress (Hilton 1997, p. 68). One site, reported to be widely open in 1968, is now partially shaded due to closing of the canopy (Hilton 1997, p.18). Nonnative plants, including *Ligustrum vulgare* (common privet) and *Lonicera maackii* (bush honeysuckle), are a significant threat in many glades due to the ever present disturbances that allow for their colonization (Hilton 1997, p. 68). Nonnative plant species pose a threat to one population of the fleshy-fruit gladecress, where they have established near an unimproved road traversing the site (Hilton 1997, p.18).

Under natural conditions, cedar glades are edaphically (related to or caused by particular soil conditions) maintained through processes of drought and erosion interacting with other processes that disrupt encroachment of competing vegetation. Soils that develop on glades are easily eroded, moving downslope or into fractures in the substrate. The shallow soil, exposed rock, and frequently hot, dry summers create xeric conditions that regulate competition and shading from encroaching vegetation (Hilton 1997, p. 5; McDaniel and Lyons 1987, p. 6; Baskin *et al.* 1986, p. 138; Rollins 1963, p. 5). Historically, periodic fires also likely played a role in maintaining these communities (Shotz 2009, p. 1). Extant occurrences of fleshy-fruit gladecress are primarily located in areas modified for human use. These habitat modifications have either eliminated or reduced the frequency of natural disturbance processes, such as fire, that would otherwise regulate encroachment of competing vegetation.

Residential and Industrial Development

Hilton (pers. comm., 1999) considered residential and industrial development that had taken place in the decade prior to her study to be the primary threat to cedar glade communities and the primary reason for the loss of cedar glade habitat. One of the six fleshy-fruit gladecress populations is located in the front yard of a private residence. However, at this time, we know of no projects that would lead to the destruction of habitat where this species is currently located.

Climate Change

We discuss the topic of climate change in greater detail above in the Factor A threats analysis for Short's bladderpod, which is also applicable to the fleshy-fruit gladecress. Since, 1970, the average annual temperature across the Southeast has increased by about 2 °F, with the greatest increases occurring during the winter months. The geographic extent of areas in the Southeast region affected by moderate to severe spring and summer drought has increased over the past three decades by 12 and 14 percent, respectively (Karl *et al.* 2009, p. 111). These trends are expected to increase. Rates of warming are predicted to more than double in comparison to what the Southeast has experienced since 1975, with the greatest increases projected for summer months. Depending on the emissions scenario used for modeling change, average temperatures are expected to increase by 4.5 °F to 9 °F by the 2080s (Karl *et al.* 2009. p. 111). While there is considerable variability in rainfall predictions throughout the region, increases in evaporation of moisture from soils and loss of water by plants in response to warmer temperatures are expected to contribute to increased frequency, intensity, and duration of drought events (Karl *et al.* 2009, p. 112).

A warmer climate with more frequent droughts, but also extreme precipitation events, may adversely affect fleshy-fruit gladecress by altering the glade habitat the species requires. Ephemeral seeps and streams on glades provide microhabitats important to the distribution of the species (Hilton 1997, p. 5). Climate change may also improve habitat conditions for invasive plant species and other plants (USFWS 2010, p. 5). A positive effect of increased drought could result from increased mortality of woody vegetation and reduced rates of vegetation succession.

While climate has changed in recent decades in the region where fleshy-fruit gladecress occurs and the rate of change likely will continue to increase for the foreseeable future, we are unable to determine how the habitats where fleshy-fruit gladecress occurs will be affected by these changes and how the species will respond to these changes.

Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailment of Its Range

The occurrence and its habitat on William B. Bankhead National Forest (WBNF) is protected due to its location in a Native American cultural site and the fact that cedar glade communities are considered ''rare communities'' on the WBNF and protected from detrimental effects from agency actions (A. Cochran, U.S. Forest Service, in litt. 2005). A thorough survey of limestone and sandstone glades on the WBNF was completed by Schotz in 2006. Nine glades presently are known to occur on WBNF, with sandstone glades constituting the largest percentage of glade surface area. The fleshy-fruit gladecress inhabits Indian Tomb Hollow Glade, the one limestone glade present on WBNF, with a surface area of approximately 2.7 ha (1.1 ac). WBNF conducted treatment of the nonnative invasive species *Ligustrum sinense* (Chinese privet) on the Indian Tomb Hollow Glade in the fall of 2009 and summer of 2011. The U.S. Forest Service has posted the area of the gladecress population as closed to access and monitors impacts to the glade from off-road vehicles. Seeds from the Indian Tomb Hollow Glade were collected in May 2010, and sent to the USDA National Center for Genetic Resources Preservation for long-term storage.

The Service funded a survey of cedar glade habitats in the Moulton Valley physiographic region of northwestern Alabama, the major area for this habitat type, in the late 1990s. A survey and status update for all fleshy-fruit gladecress populations was part of that project. The Service recently funded surveys to update information on all populations of this species. All sites were visited in 2006 and 2007, and surveys continued into 2009 (Schotz 2009). This information will be used to develop conservation measures needed to protect and enhance populations.

Summary of Factor A

The threats to fleshy-fruit gladecress from habitat destruction and modification are occurring throughout the entire range of the species. These threats include agricultural conversion or incompatible practices, maintenance of transportation rights-of-way, residential and industrial development, and shading and competition. Conservation efforts of the U.S. Forest Service have removed threats associated with off-road vehicle use and encroachment of invasive species at one site; however, maintenance of transportation right-of-ways and use of off-road vehicles could adversely affect the remaining five extant populations. The population-level impacts from these activities are expected to continue into the future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There is no information to suggest that fleshy-fruit gladecress is collected for commercial, recreational, or educational purposes, and we have no reason to believe that this factor will become a threat to the species in the future.

Factor C. Disease or Predation

One occurrence was lost due to infection by mustard rust in the early 1980s (Lyons and Antonovics 1991, p. 274; McDaniel and Lyons 1987, p. 11). We have no data to indicate whether this disease poses a significant long-term threat to the species generally. There is no information regarding predation of the species by wildlife. Grazing is ongoing across the range of the gladecress and occurs on portions of all extant population sites; however, there is no information to document that cattle eat gladecress. No studies have been conducted to investigate the effect of grazing or herbivory specifically on fleshy-fruit gladecress.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The greatest threats to the gladecress include loss of habitat and the plants themselves due to actions that remove the substrate under the populations or that cover them up. These types of actions have been associated with conversion of native glades or pastures with glades and outcrops to other land uses and potentially herbicide applications for the purpose of controlling invasive plants. State and Federal regulations that might help conserve rare species on State highway rights-of-way, including avoidance or minimization of habitat destruction, as well as regulations that would protect plants from herbicide applications, protect only already listed species, and therefore do not apply to gladecress. Likewise, no existing regulations protect the species on privately owned land, where most of the remnant gladecress populations are found.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

The fleshy-fruit gladecress is vulnerable to localized extinction because of the small number of occurrences and the small population sizes within the species' limited range. Small population sizes decrease the resilience of individual fleshy-fruit gladecress occurrences to recover from effects of other threats affecting the species' habitat. There are only six remaining flesh-fruit gladecress occurrences, and only one of these is protected. The loss of any occurrences would significantly impact the species' viability by reducing its redundancy on the landscape, which would increase its vulnerability to stochastic environmental stressors and reduce the species' resilience to recover from effects of threats discussed in the above sections.

Three of the six populations of fleshy-fruit gladecress are small in size as a result of effects of habitat loss discussed in the above sections. The loss of populations and reductions in population sizes have resulted in spatial isolation between these remnant populations. These isolated populations are vulnerable to extinction by reductions in genetic variation among the populations (Klank *et al.* 2012, pp. 1–2; Shotz, pers. comm., 2013). Based on this information we conclude that the small number of populations and the small size of populations within the species' limited range are significant threats to fleshy-fruit gladecress.

Cumulative Effects From Factors A Through E

Where two or more threats affect fleshy-fruit gladecress occurrences, the effects of those threats could interact or be compounded, producing a cumulative adverse effect that rises above the incremental effect of either threat alone. Cumulative adverse effects could be significant for fleshy-fruit gladecress because three of the six extant populations are small (Factor E) and all but one of the extant occurrences are affected by threats that result in the destruction or modification of habitat. The vulnerability of these occurrences to habitat modification or destruction is heightened by effects of small population size discussed above, reduced resilience to recover from acute demographic effects of these disturbances, and low potential for recolonization due to isolation from other occurrences.

Proposed Determinations

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats to Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress. Below we state which of the five factors are determined to be threats to these species and summarize the severity, timing, and significance of those threats.

Short's Bladderpod

The most significant threats to this species are described under Listing Factors A (the present or threatened destruction, modification, or curtailment of its habitat or range) and E (other natural or manmade factors affecting its continued existence). Based on the Factor A analysis, we conclude that the loss and degradation of habitat represents the greatest threat to Short's bladderpod. Road construction has caused the loss of habitat and all Short's bladderpod plants at five occurrences in the past, and roadside maintenance or road widening could adversely affect nearly 40 percent of the extant occurrences of the species due to their position in roadside habitats. Future development of a commuter rail project to improve intercity commute options between the cities of Nashville and Clarksville, Tennessee, could affect 27 percent of known extant occurrences, including some locations where the species is found in greatest abundance.

Flooding and water level fluctuations threaten 19 percent of extant Short's bladderpod occurrences, most notably the single Indiana occurrence, where the species has been present in large numbers but recently experienced a reduction in numbers due to prolonged flooding. Overstory shading due to natural forest succession, combined with shading and competition due to invasive, nonnative shrubs and herbaceous species presents the most widespread, imminent threat to Short's bladderpod, and has been implicated in the loss of several historic occurrences. These threats are expected to continue into the foreseeable future.

The Factor E analysis demonstrated that Short's bladderpod is vulnerable to adverse effects of small population size, including potential for reduced genetic variation, low numbers of compatible mates, increased likelihood of inbreeding depression, and reduced resilience to recover from acute demographic effects of other threats to the species and is habitat. Fewer than 100 plants have ever been observed at one time at 12 (46 percent) of the 26 extant occurrences, and many of these occurrences are isolated from other occurrences. Existing threats may be exacerbated by the effects of ongoing and future climate change, especially projected increases in temperature and increased frequency and severity of droughts in the Southeast and projected increases in flooding in the Midwest.

Based on our review of the best available scientific and commercial information, we conclude that adverse effects associated with small and often isolated populations, as described in the Factor E analysis, both alone and in conjunction with the widespread threats described under Factor A, constitute significant threats to Short's bladderpod. As discussed under Factor D, no regulatory mechanisms exist that would prevent or restrict activities described under Factor A that constitute significant threats to the species. Therefore, on the basis of best available scientific and commercial information we have determined that Short's bladderpod is in danger of extinction

throughout all or a significant portion of its range and that a proposed determination as an endangered species is appropriate.

Whorled Sunflower

The most significant threats to this species are described under Listing Factors A (the present or threatened destruction, modification, or curtailment of its habitat or range) and E (other natural or manmade factors affecting its continued existence). Based on the Factor A analysis, we conclude that the loss and degradation of habitat represents the greatest threat to whorled sunflower. Past and ongoing risk of adverse effects from mechanical or chemical vegetation management for industrial forestry, right-of-way maintenance, or agriculture is a threat to three of the four extant populations of this species. Modification of the remnant prairie habitats that the species occupies due to shading and competition resulting from vegetation succession also threatens these three populations, limiting growth and reproductive output of whorled sunflower. These threats are expected to continue in the foreseeable future. A conservation easement and suitable habitat management currently alleviates these threats that otherwise would adversely affect the Georgia population.

The Factor E analysis demonstrated that whorled sunflower is vulnerable to localized extinction because of its extremely restricted distribution and small population sizes at most known locations. Small population size could be affecting reproductive fitness of whorled sunflower by limiting availability of compatible mates or by causing higher rates of inbreeding among closely related individuals. Both of these could be contributing to reduced seed production and viability rates, which limit the species' ability to recovery from acute demographic effects of habitat loss or modification. The species' dependence on remnant prairie habitats, which are isolated on the landscape, limits the potential for recolonization in the event that localized extinction events occur.

Based on our review of the best available scientific and commercial information, we conclude that adverse effects associated with extremely restricted distribution and small and isolated populations, as described in the Factor E analysis, both alone and in conjunction with the threats described under Factor A, constitute significant threats to whorled sunflower. As discussed under Factor D, no regulatory mechanisms exist that would prevent or restrict activities described under Factor A that constitute significant threats to the species. Therefore, on the basis of best available scientific and commercial information we have determined that whorled sunflower is in danger of extinction throughout all or a significant portion of its range and that a proposed determination as an endangered species is appropriate.

Fleshy-fruit Gladecress

The most significant threats to this species are described under Listing Factors A (the present or threatened destruction, modification, or curtailment of its habitat or range) and E (other natural or manmade factors affecting its continued existence). Based on the Factor A analysis, we conclude that the loss and degradation of habitat represents the greatest threat to fleshy-fruit gladecress. The threats to fleshy-fruit gladecress from habitat destruction and modification are occurring throughout the entire range of the species. These threats include agricultural conversion for use as pasture or incompatible practices, maintenance of transportation rights-of-way (including mowing and herbicide treatment prior to seed set along roadsides), the impacts of off-road vehicles, dumping, residential and industrial development, and shading and competition. Conservation efforts of the U.S. Forest Service have removed threats associated with off-road vehicle use and encroachment of invasive species at one site; however, maintenance of transportation right-of-ways and use of off-road vehicles could adversely affect the remaining five extant populations.

Shading due to natural forest succession and competition from nonnative invasive plants presents a significant threat to fleshy-fruit gladecress, and has been implicated in the loss of five historic occurrences. One site, reported to be widely open in 1968, is now partially shaded due to closing of the canopy and the presence of nonnative plants, including *Ligustrum vulgare* (common privet) and *Lonicera maackii* (bush honeysuckle), and these are significant threats in many glades due to the ever present disturbances that allow for nonnative plant colonization. These threats are expected to continue into the foreseeable future.

The Factor E analysis demonstrated that fleshy-fruit gladecress is vulnerable to localized extinction because of the small number of occurrences and the small population sizes within its limited range. Small population sizes decrease the resilience of individual fleshy-fruit gladecress occurrences to recover from effects of other threats affecting its habitat and reduce genetic variation among populations. There are only six remaining flesh-fruit gladecress occurrences, and only one of these is protected. The loss of any occurrences would significantly impact the species' viability by reducing its redundancy on the landscape, which would increase its vulnerability to stochastic environmental stressors and reduce the species' resilience to recover from effects of threats discussed in the above sections.

Based on our review of the best available scientific and commercial information, we conclude that adverse effects associated with limited distribution and small population size, as described in the Factor E analysis, both alone and in conjunction with the threats described under Factor A, constitute significant threats to fleshy-fruit gladecress. As discussed under Factor D, no regulatory mechanisms exist that would prevent or restrict activities described under Factor A that constitute significant threats to the species. Therefore, on the basis of best available scientific and commercial information we have determined that fleshy-fruit gladecress is in danger of extinction throughout all or a significant portion of its range and that a proposed determination as an endangered species is appropriate.

Significant Portion of the Range

The Act defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' A major part of the analysis of ''significant portion of the range'' requires considering whether the threats to the species are geographically concentrated in any way. If the threats are essentially uniform throughout the species' range, then no portion is likely to warrant further consideration. Based on the threats to Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress throughout their entire known ranges, we find that these species currently are in danger of extinction throughout all of their ranges, based on the severity and scope of the threats described above. As discussed above, these species are proposed for listing as endangered species, rather than threatened species, because the threats are occurring now or will in the near term, and their potential impacts to the species would be severe given the limited known distribution of the species, the small population sizes at many of the remaining sites, and the small area occupied by many of these populations, putting these species at risk of extinction at the present time. As these threats extend throughout their

entire ranges, it is unnecessary to determine if they are in danger of extinction throughout a significant portion of their ranges. Therefore, on the basis of the best available scientific and commercial data, we propose listing Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress as endangered species throughout their ranges in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprised of species experts, Federal and State agencies, nongovernment organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from the Service's Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Indiana, Kentucky, and Tennessee would be eligible for Federal funds to implement management actions that promote the protection or recovery of Short's bladderpod. The States of Georgia and Tennessee would eligible for Federal funds to implement management actions that promote the protection or recovery of whorled sunflower. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include federally funded or permitted actions occurring within habitat for Short's bladderpod, whorled sunflower, or fleshy-fruit gladecress (e.g., management and any other landscape altering activities on Federal lands administered by the U.S. Army Corps of Engineers or U.S. Forest Service; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; construction and maintenance of roads or highways funded or carried out by the Federal Highway Administration; and Federal Emergency Management Agency-funded actions). Also subject to consultation would be provision of Federal funds to State and private entities through Federal programs such as the Service's Partners for Fish and Wildlife Program, State Wildlife Grant Program, and Federal Aid in Wildlife Restoration Program.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a

commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies. The States of Georgia, Indiana, Kentucky, and Tennessee have regulations authorizing the promulgation of lists of endangered plants; however, with the exception of Georgia, these regulations create no obligations on the part of landowners, public or private, to protect State-listed plants. The Georgia Environmental Policy Act requires that impacts to protected species be addressed for all projects on State-owned lands, and for all projects undertaken by a municipality or county if funded half or more by State funds, or by a State grant of more than $250,000. The Act will, therefore, offer additional protection to these species.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62 for endangered plants, and at 17.72 for threatened plants. With regard to endangered plants, a permit must be issued for the following purposes: for scientific purposes or to enhance the propagation or survival of the species.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of Short's bladderpod, whorled sunflower, or fleshy-fruit gladecress, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Unauthorized removal, damage, or destruction of Short's bladderpod or fleshy-fruit gladecress plants from populations located on Federal land (lands owned by the U.S. Army Corps of Engineers or on which they hold easements, or U.S. Forest Service lands); and

(3) Unauthorized removal, damage or destruction of Short's bladderpod, whorled sunflower, or fleshy-fruit gladecress plants on private land in violation of any State regulation, including criminal trespass.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Service's Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed species and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, 105 West Park Drive, Suite D, Athens, GA 30606; telephone 706–613–9493; facsimile 706–613–6059.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our listing determination for these species is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during the public comment period.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposal in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Persons needing reasonable accommodations to attend and participate in a public hearing should contact the Tennessee Ecological Services Field Office at (931) 528–6481, as soon as possible. To allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding this proposed rule is available in alternative formats upon request.

Required Determinations

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the emergency rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You also may email the comments to this address: *Exsec@ios.goi.gov.*

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with listing a species as an endangered or threatened species under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2013–0087 or upon request from the Field Supervisor, Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this proposed rule are the staff members of the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**) and the Alabama Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. In § 17.12 paragraph (h), add entries for *Helianthus verticillatus, Leavenworthia crassa,* and *Physaria globosa,* in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Helianthus verticillatus.	whorled sunflower ..	U.S.A. (AL, GA, TN)	Asteraceae	E	.....	NA	NA
*	*	*	*	*	*	*	
Leavenworthia crassa.	fleshy-fruit gladecress.	U.S.A. (AL)	Brassicaceae	E	.....	NA	NA
*	*	*	*	*	*	*	
Physaria globosa	Short's bladderpod	U.S.A. (IN, KY, TN)	Brassicaceae	E	.....	NA	NA
*	*	*	*	*	*	*	

* * * * *

Dated: July 18, 2013.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–18213 Filed 8–1–13; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2013–14 Season; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2013–0057; FF09M21200–134–FXMB1231099BPP0]

RIN 1018–AY87

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2013–14 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter, Service or we) proposes special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2013–14 migratory bird hunting season.

DATES: We will accept all comments on the proposed regulations that are postmarked or received in our office by August 12, 2013.

ADDRESSES: You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2013–0057.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–HQ–MB–2013–0057; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept emailed or faxed comments. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240; (703) 358–1714.

SUPPLEMENTARY INFORMATION: In the April 9, 2013, **Federal Register** (78 FR 21200), we requested proposals from Indian Tribes wishing to establish special migratory bird hunting regulations for the 2013–14 hunting season, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). In this supplemental proposed rule, we propose special migratory bird hunting regulations for 30 Indian Tribes, based on the input we received in response to the April 9, 2013, proposed rule, and our previous rules. As described in that proposed rule, the promulgation of annual migratory bird hunting regulations involves a series of rulemaking actions each year. This proposed rule is part of that series.

We developed the guidelines for establishing special migratory bird hunting regulations for Indian Tribes in response to tribal requests for recognition of their reserved hunting rights and, for some Tribes, recognition of their authority to regulate hunting by both tribal and nontribal hunters on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal hunters, with hunting by nontribal hunters on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of the usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10 to September 1 closed season mandated by the 1916 Convention between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Treaty). The guidelines apply to those Tribes having recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal hunters on all lands within the exterior boundaries of reservations where Tribes have full wildlife management authority over such hunting or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal hunters on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, we encourage the Tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a Tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where Tribes wish to establish special hunting regulations for tribal members on ceded lands. Because of past questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, we provide the following clarification.

We routinely provide copies of **Federal Register** publications pertaining to migratory bird management to all State Directors, Tribes, and other interested parties. It is the responsibility of the States, Tribes, and others to notify us of any concern regarding any feature(s) of any regulations. When we receive such notification, we will initiate consultation.

Our guidelines provide for the continued harvest of waterfowl and other migratory game birds by tribal members on reservations where such harvest has been a customary practice. We do not oppose this harvest, provided it does not take place during the closed season defined by the Treaty, and does not adversely affect the status of the migratory bird resource. Before developing the guidelines, we reviewed available information on the current status of migratory bird populations, reviewed the current status of migratory bird hunting on Federal Indian reservations, and evaluated the potential impact of such guidelines on migratory birds. We concluded that the impact of migratory bird harvest by tribal members hunting on their reservations is minimal.

One area of interest in Indian migratory bird hunting regulations relates to hunting seasons for nontribal hunters on dates that are within Federal frameworks, but which are different from those established by the State(s) where the reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse population impacts on one or more migratory bird species. The guidelines make this unlikely, and we may modify regulations or establish experimental special hunts, after evaluation of information obtained by the Tribes.

We believe the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian Tribes while ensuring that the

migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. Further, the guidelines should not be viewed as inflexible. In this regard, we note that they have been employed successfully since 1985. We believe they have been tested adequately and, therefore, we made them final beginning with the 1988–89 hunting season (53 FR 31612, August 18, 1988). We should stress here, however, that use of the guidelines is not mandatory and no action is required if a Tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Service Migratory Bird Regulations Committee Meetings

Participants at the June 19–20, 2013, meetings reviewed information on the current status of migratory shore and upland game birds and developed 2013–14 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the U.S. Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl.

Participants at the previously announced July 31–August 1, 2013, meetings will review information on the current status of waterfowl and develop recommendations for the 2013–14 regulations pertaining to regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In accordance with Department of the Interior policy, these meetings are open to public observation and you may submit comments on the matters discussed.

Population Status and Harvest

Preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds was excerpted from various reports and provided in the July 26, 2013, **Federal Register** (78 FR 45376). For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **FOR FURTHER INFORMATION CONTACT**, from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html*, or from *http://www.regulations.gov*.

Hunting Season Proposals From Indian Tribes and Organizations

For the 2013–14 hunting season, we received requests from 25 Tribes and Indian organizations. In this proposed rule, we respond to these requests and also evaluate anticipated requests for five Tribes from whom we usually hear but from whom we have not yet received proposals. We actively solicit regulatory proposals from other tribal groups that are interested in working cooperatively for the benefit of waterfowl and other migratory game birds. We encourage Tribes to work with us to develop agreements for management of migratory bird resources on tribal lands.

It should be noted that this proposed rule includes generalized regulations for both early- and late-season hunting. A final rule will be published in a late-August 2013 **Federal Register** that will include tribal regulations for the early-hunting season. Early seasons generally begin around September 1 each year, and most commonly include such species as American woodcock, sandhill cranes, mourning doves, and white-winged doves. Late seasons generally begin on or around September 24, and most commonly include waterfowl species.

In this current rulemaking, because of the compressed timeframe for establishing regulations for Indian Tribes and because final frameworks dates and other specific information are not available, the regulations for many tribal hunting seasons are described in relation to the season dates, season length, and limits that will be permitted when final Federal frameworks are announced for early- and late-season regulations. For example, daily bag and possession limits for ducks on some areas are shown as the same as permitted in Pacific Flyway States under final Federal frameworks, and limits for geese will be shown as the same permitted by the State(s) in which the tribal hunting area is located.

The proposed frameworks for early-season regulations were published in the **Federal Register** on July 26, 2013 (78 FR 45376); early-season final frameworks will be published in late August. Proposed late-season frameworks for waterfowl and coots will be published in mid-August, and the final frameworks for the late seasons will be published in mid-September. We will notify affected Tribes of season dates, bag limits, etc., as soon as final frameworks are established. As previously discussed, no action is required by Tribes wishing to observe migratory bird hunting regulations established by the State(s) where they are located. The proposed regulations for the 30 Tribes that meet the established criteria are shown below.

(a) Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nontribal Hunters)

The Colorado River Indian Reservation is located in Arizona and California. The Tribes own almost all lands on the reservation, and have full wildlife management authority.

In their 2013–14 proposal, the Colorado River Indian Tribes request split dove seasons. They propose that their early season begin September 1 and end September 15, 2013. Daily bag limits would be 10 mourning or white-winged doves in the aggregate. The late season for doves is proposed to open November 9, 2013, and close December 23, 2013. The daily bag limit would be 10 mourning doves. The possession limit would be twice the daily bag limit after the first day of the season. Shooting hours would be from one-half hour before sunrise to noon in the early season and until sunset in the late season. Other special tribally set regulations would apply.

The Tribes also propose duck hunting seasons. The season would open October 12, 2013, and close January 26, 2014. The Tribes propose the same season dates for mergansers, coots, and common moorhens. The daily bag limit for ducks, including mergansers, would be seven, except that the daily bag limits could contain no more than two hen mallards, two redheads, two Mexican ducks, two goldeneye, three scaup, one pintail, two cinnamon teal, and one canvasback. The possession limit would be twice the daily bag limit after the first day of the season. The daily bag and possession limit for coots and common moorhens would be 25, singly or in the aggregate. Shooting hours would be from one-half hour before sunrise to sunset.

For geese, the Colorado River Indian Tribes propose a season of October 13, 2013, through January 20, 2014. The daily bag limit for geese would be three light geese and three dark geese. The possession limit would be six light geese and six dark geese after opening day. Shooting hours would be from one-half hour before sunrise to sunset.

In 1996, the Tribes conducted a detailed assessment of dove hunting. Results showed approximately 16,100 mourning doves and 13,600 white-winged doves were harvested by approximately 2,660 hunters who averaged 1.45 hunter-days. Field observations and permit sales indicate

that fewer than 200 hunters participate in waterfowl seasons. Under the proposed regulations described here and based upon past seasons, we and the Tribes estimate harvest will be similar.

Hunters must have a valid Colorado River Indian Reservation hunting permit and a Federal Migratory Bird Stamp in their possession while hunting. Other special tribally set regulations would apply. As in the past, the regulations would apply both to tribal and nontribal hunters, and nontoxic shot is required for waterfowl hunting.

We propose to approve the Colorado River Indian Tribes regulations for the 2013–14 hunting season, given the seasons' dates fall within final flyway frameworks (applies to nontribal hunters only).

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal and Nontribal Hunters)

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. The State and the Tribes are currently operating under a cooperative agreement signed in 1990, that addresses fishing and hunting management and regulation issues of mutual concern. This agreement enables all hunters to utilize waterfowl hunting opportunities on the reservation.

As in the past, tribal regulations for nontribal hunters would be at least as restrictive as those established for the Pacific Flyway portion of Montana. Goose, duck, and coot season dates would also be at least as restrictive as those established for the Pacific Flyway portion of Montana. Shooting hours for waterfowl hunting on the Flathead Reservation are sunrise to sunset. Steel shot or other federally approved nontoxic shots are the only legal shotgun loads on the reservation for waterfowl or other game birds.

For tribal members, the Tribe proposes outside frameworks for ducks and geese of September 1, 2013, through March 9, 2014. Daily bag and possession limits were not proposed for tribal members.

The requested season dates and bag limits are similar to past regulations. Harvest levels are not expected to change significantly. Standardized check station data from the 1993–94 and 1994–95 hunting seasons indicated no significant changes in harvest levels and that the large majority of the harvest is by nontribal hunters.

We propose to approve the Tribes' request for special migratory bird regulations for the 2013–14 hunting season.

(c) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

Since 1996, the Service and the Fond du Lac Band of Lake Superior Chippewa Indians have cooperated to establish special migratory bird hunting regulations for tribal members. The Fond du Lac's May 26, 2013, proposal covers land set apart for the band under the Treaties of 1837 and 1854 in northeastern and east-central Minnesota and the Band's Reservation near Duluth.

The band's proposal for 2013–14 is essentially the same as that approved last year except for an expansion of the sandhill crane season to include both the 1854 and 1837 ceded territories only and not reservation lands. The proposed 2013–14 waterfowl hunting season regulations for Fond du Lac are as follows:

Ducks

A. 1854 and 1837 Ceded Territories:

Season Dates: Begin September 14 and end November 24, 2013.

Daily Bag Limit: 18 ducks, including no more than 12 mallards (only 3 of which may be hens), 9 black ducks, 9 scaup, 9 wood ducks, 9 redheads, 9 pintails, and 9 canvasbacks.

B. Reservation:

Season Dates: Begin September 1 and end November 24, 2013.

Daily Bag Limit: 12 ducks, including no more than 8 mallards (only 2 of which may be hens), 6 black ducks, 6 scaup, 6 redheads, 6 pintails, 6 wood ducks, and 6 canvasbacks.

Mergansers

A. 1854 and 1837 Ceded Territories:

Season Dates: Begin September 14 and end November 24, 2013.

Daily Bag Limit: 15 mergansers, including no more than 6 hooded mergansers.

B. Reservation:

Season Dates: Begin September 1 and end November 24, 2013.

Daily Bag Limit: 10 mergansers, including no more than 4 hooded mergansers.

Canada Geese: All Areas:

Season Dates: Begin September 1 and end November 24, 2013.

Daily Bag Limit: 20 geese.

Sandhill Cranes: 1854 and 1837 Ceded Territories:

Season Dates: Begin September 1 and end November 24, 2013.

Daily Bag Limit: One sandhill crane. A crane carcass tag is required prior to hunting.

Coots and Common Moorhens (Common Gallinules)

A. 1854 and 1837 Ceded Territories:

Season Dates: Begin September 14 and end November 24, 2013.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

B. Reservation:

Season Dates: Begin September 1 and end November 24, 2013.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails: All Areas:

Season Dates: Begin September 1 and end November 24, 2013.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe: All Areas:

Season Dates: Begin September 1 and end November 24, 2013.

Daily Bag Limit: Eight common snipe.

Woodcock: All Areas:

Season Dates: Begin September 1 and end November 24, 2013.

Daily Bag Limit: Three woodcock.

Mourning Dove: All Areas

Season Dates: Begin September 1 and end October 30, 2013.

Daily Bag Limit: 30 mourning doves.

The following general conditions apply:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid Ceded Territory License.

2. Shooting hours for migratory birds are one-half hour before sunrise to one-half hour after sunset.

3. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

4. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

5. There are no possession limits for migratory birds except for cranes in the Ceded Territories, unless otherwise noted above. For purposes of enforcing bag limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall

on reservation lands will not count as part of any off-reservation bag or possession limit.

The band anticipates harvest will be fewer than 500 ducks and geese, and fewer than 10 sandhill cranes.

We propose to approve the request for special migratory bird hunting regulations for the Fond du Lac Band of Lake Superior Chippewa Indians.

(d) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

In the 1995–96 migratory bird seasons, the Grand Traverse Band of Ottawa and Chippewa Indians and the Service first cooperated to establish special regulations for waterfowl. The Grand Traverse Band is a self-governing, federally recognized Tribe located on the west arm of Grand Traverse Bay in Leelanau County, Michigan. The Grand Traverse Band is a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2013–14 season, the Tribe requests that the tribal member duck season run from September 15, 2013, through January 15, 2014. A daily bag limit of 20 would include no more than 5 pintail, 3 canvasback, 1 hooded merganser, 5 black ducks, 5 wood ducks, 3 redheads, and 9 mallards (only 4 of which may be hens).

For Canada and snow geese, the Tribe proposes a September 1 through November 30, 2013, and a January 1 through February 8, 2013, season. For white-fronted geese and brant, the Tribe proposes a September 20 through November 30, 2013, season. The daily bag limit for Canada and snow geese would be 10, and the daily bag limit for white-fronted geese and including brant would be 5 birds. We further note that, based on available data (of major goose migration routes), it is unlikely that any Canada geese from the Southern James Bay Population will be harvested by the Tribe.

For woodcock, the Tribe proposes a September 1 through November 14, 2013, season. The daily bag limit will not exceed five birds. For mourning doves, snipe, and rails, the Tribe usually proposes a September 1 through November 14, 2013, season. The daily bag limit would be 10 per species.

For sandhill cranes, the Tribe proposes a new season of September 1 through November 30, 2013. The daily bag limit will not exceed one bird daily. All cranes in this proposed hunt area are Eastern Population (EP) sandhill cranes (see Sandhill Crane Daily Bag Limit under (e) Great Lakes Indian Fish and Wildlife Commission for further discussion).

All other Federal regulations contained in 50 CFR part 20 would apply. The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. Harvest surveys from the 2011–12 hunting season indicated that approximately 29 tribal hunters harvested an estimated 140 ducks and 45 Canada geese.

We propose to approve the Grand Traverse Band of Ottawa and Chippewa Indians 2013–14 special migratory bird hunting proposal, including the continuance of the sandhill crane season. However, given the need to closely monitor the harvest of this species, we suggest that Grand Traverse implement either a special crane harvest tag or crane harvest reporting system/survey to track crane harvest, similar to that implemented by Fond du Lac last year.

(e) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized, off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission. (GLIFWC is an intertribal agency exercising delegated natural resource management and regulatory authority from its member Tribes in portions of Wisconsin, Michigan, and Minnesota). Beginning in 1986, a Tribal season on ceded lands in the western portion of the Michigan Upper Peninsula was developed in coordination with the Michigan Department of Natural Resources. We have approved regulations for Tribal members in both Michigan and Wisconsin since the 1986–87 hunting season. In 1987, GLIFWC requested, and we approved, regulations to permit Tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin originally concurred with the regulations, although both Wisconsin and Michigan have raised various concerns over the years. Minnesota did not concur with the original regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. In 1999, the U.S. Supreme Court upheld the existence of the tribes' treaty reserved rights in *Minnesota* v. *Mille Lacs Band,* 199 S.Ct. 1187 (1999).

We acknowledge all of the States' concerns, but point out that the U.S. Government has recognized the Indian treaty reserved rights, and that acceptable hunting regulations have been successfully implemented in Minnesota, Michigan, and Wisconsin. Consequently, in view of the above, we have approved regulations since the 1987–88 hunting season on ceded lands in all three States. In fact, this recognition of the principle of treaty reserved rights for band members to hunt and fish was pivotal in our decision to approve a 1991–92 season for the 1836 ceded area in Michigan. Since then, in the 2007 Consent Decree the 1836 Treaty Tribes' and Michigan Department of Natural Resources and Environment established court-approved regulations pertaining to off-reservation hunting rights for migratory birds.

For 2013, the GLIFWC proposes off-reservation special migratory bird hunting regulations on behalf of the member Tribes of the Voigt Intertribal Task Force of the GLIFWC (for the 1837 and 1842 Treaty areas in Wisconsin and Michigan), the Mille Lacs Band of Ojibwe and the six Wisconsin Bands (for the 1837 Treaty area in Minnesota), and the Bay Mills Indian Community (for the 1836 Treaty area in Michigan). Member Tribes of the Task Force are: the Bad River Band of the Lake Superior Tribe of Chippewa Indians, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, the Lac du Flambeau Band of Lake Superior Chippewa Indians, the Red Cliff Band of Lake Superior Chippewa Indians, the St. Croix Chippewa Indians of Wisconsin, and the Sokaogon Chippewa Community (Mole Lake Band), all in Wisconsin; the Mille Lacs Band of Chippewa Indians and the Fond du Lac Band of Lake Superior Chippewa Indians in Minnesota; and the Lac Vieux Desert Band of Chippewa Indians and the Keweenaw Bay Indian Community in Michigan.

The GLIFWC 2013 proposal has several significant changes from regulations approved last season. In the 1837 and 1842 Treaty Areas, the GLIFWC proposal would allow the use of electronic calls through September 20; would extend shooting hours by 45 minutes before sunrise and after sunset; would increase the daily bag limit from 1 to 2 sandhill cranes; would allow the first hunting season of swans; would open the season for several species (other than geese) to September 1; and

would require nontoxic shot for all migratory bird hunting. In the 1836 Treaty Area, the GLIFWC's proposal would open the season for several species to September 1 to align with the goose season.

GLIFWC states that the proposed regulatory changes are intended to provide tribal members a harvest opportunity within the scope of rights reserved in their various treaties and increase tribal subsistence harvest opportunities, while protecting migratory bird populations. Under the GLIFWC's proposed regulations, GLIFWC expects total ceded territory harvest to be approximately 1,575 ducks, 300 geese, 20 sandhill cranes, and 20 swans, which is roughly similar to anticipated levels in previous years for those species for which seasons were established. GLIWFC further anticipates that tribal harvest will remain low given the small number of tribal hunters and the limited opportunity to harvest more than a small number of birds on most hunting trips.

Recent GLIFWC harvest surveys (1996–98, 2001, 2004, and 2007–08, 2011, and 2012) indicate that tribal off-reservation waterfowl harvest has averaged fewer than 1,100 ducks and 250 geese annually. In the latest survey year for which we have specific results (2004), an estimated 53 hunters took an estimated 421 trips and harvested 645 ducks (1.5 ducks per trip) and 84 geese (0.2 geese per trip). Analysis of hunter survey data over 1996–2004 indicates a general downward trend in both harvest and hunter participation. GLIFWC is still completing a survey intiated after the 2012 season to determine if any increase in harvest occurred following several regulation changes.

While we acknowledge that tribal harvest and participation has declined in recent years, we do not believe that some of the GLIFWC's proposal for tribal waterfowl seasons on ceded lands in Wisconsin, Michigan, and Minnesota for the 2013–14 season is in the best interest of the conservation of migratory birds. More specific discussion follows below.

Allowing Electronic Calls

As we stated the last two years (76 FR 54676, September 1, 2011; 77 FR 54451, September 5, 2012), the issue of allowing electronic calls and other electronic devices for migratory game bird hunting has been highly debated and highly controversial over the last 40 years, similar to other prohibited hunting methods such as baiting. Electronic calls, i.e., the use or aid of recorded or electronic amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds to lure or attract migratory game birds to hunters, was Federally prohibited in 1957, because of their effectiveness in attracting and aiding the harvest of ducks and geese and are generally not considered a legitimate component of hunting. In 1999, after much debate, the migratory bird regulations were revised to allow the use of electronic calls for the take of light geese (lesser snow geese and Ross geese) during a light-goose-only season when all other waterfowl and crane hunting seasons, excluding falconry, were closed (64 FR 7507, February 16, 1999; 64 FR 71236, December 20, 1999; 73 FR 65926, November 5, 2008). The regulations were also changed in 2006, to allow the use of electronic calls for the take of resident Canada geese during Canada-goose-only September seasons when all other waterfowl and crane seasons, excluding falconry, were closed (71 FR 45964, August 10, 2006). In both instances, these changes were made in order to significantly increase the harvest of these species due to either serious population overabundance, depredation issues, or public health and safety issues, or a combination of these.

Available information from the use of additional hunting methods, such as electronic calls, during the special light-goose seasons indicate that total harvest increased approximately 50 to 69 percent. On specific days when light-goose special regulations were in effect, the mean light goose harvest increased 244 percent. One research study found that lesser snow goose flocks were 5.0 times more likely to fly within gun range (≤50 meters) in response to electronic calls than to traditional calls, and the mean number of snow geese killed per hour per hunter averaged 9.1 times greater for electronic calls than for traditional calls. While these results are only directly applicable to light geese, we believe these results are applicable to most waterfowl species, and indicative of some likely adverse harvest impacts on other geese and ducks.

Removal of the electronic call prohibition would be inconsistent with our long-standing conservation concerns. Given available evidence on the effectiveness of electronic calls, and the large biological uncertainty surrounding any widespread use of electronic calls, we believe the potential for overharvest could contribute to long-term population declines. Further, migratory patterns could be affected, and it is possible that hunter participation could increase beyond GLIFWC's estimates (50 percent) and could result in additional conservation impacts, particularly on locally breeding populations. Thus, we continue to not support allowing the use of electronic calls in the 1837 and 1842 Treaty Areas.

Additionally, given the fact that tribal waterfowl hunting covered by this proposal would occur on ceded lands that are not in the ownership of the Tribes, we believe the use of electronic calls to take waterfowl would lead to confusion on the part of the public, wildlife-management agencies, and law enforcement officials in implementing the requirements of 50 CFR part 20. Further, similar to the impacts of baiting, uncertainties concerning the zone of influence attributed to the use of electronic calls could potentially increase harvest from nontribal hunters operating within areas electronic calls are being used during the dates of the general hunt, thereby posing risks to the migratory patterns and distribution of migratory waterfowl.

Lastly, we remind GLIFWC that electronic calls are permitted for the take of resident Canada geese during Canada-goose-only September seasons when all other waterfowl and crane seasons are closed. In the case of GLIFWC's proposed seasons, electronic calls could be used September 1–14 for resident Canada geese (as long as GLIFWC's duck and crane season begins no earlier than September 15, see further discussion under *Earlier Season Opening Date*). This specific regulatory change was implemented in 2006, in order to significantly control resident Canada geese due to widespread population overabundance, depredation issues, and public health and safety issues.

Expanded Shooting Hours

Normally, shooting hours for migratory game birds are one-half hour before sunrise to sunset. A number of reasons and concerns have been cited for extending shooting hours past sunset. Potential impacts to some locally breeding populations (e.g., wood ducks), hunter safety, difficulty of identifying birds, retrieval of downed birds, and impacts on law enforcement are some of the normal concerns raised when discussing potential expansions of shooting hours. However, despite these concerns, in 2007, we supported the expansion of shooting hours by 15 minutes after sunset in the 1837, 1842, and 1836 Treaty Areas (72 FR 58452, October 15, 2007). We had previously supported this expansion in other tribal areas and have not been made aware of any wide-scale problems. Further, at that time, we believed that the continuation of a specific species restriction within the daily bag limit for

mallards, and the implementation of a species restriction within the daily bag limit for wood ducks, would allay potential conservation concerns for these species. We supported the increase with the understanding that the Tribe and we would closely monitor tribal harvest.

Last year, in deference to tribal traditions and in the interest of cooperation, and in spite of our previously identified concerns regarding species identification, species conservation of locally breeding populations, retrieval of downed birds, hunter safety, and law enforcement impacts, we approved shooting 30 minutes after sunset (an extension of 15 minutes from the then-current 15 minutes after sunset) (77 FR 54451, September 5, 2012). This was consistent with other Tribes in the general area (Fond du Lac, Leech Lake, Oneida, Sault Ste Marie, and White Earth). Extending shooting hours on both the front end and the back end of the day to 1 hour before sunrise and 1 hour after sunset as GLIWFC has proposed would be contrary to public safety and only heightens our previously identified concerns. It is widely considered dark 45 minutes after sunset (and 45 minutes before sunrise), and we see no viable remedies to allay our concerns. Shooting this early or late would also significantly increase the potential take of non-game birds. Thus, we cannot support increasing the shooting hours by an additional 15 minutes in the 1837 and 1842 Treaty Areas (to 45 minutes before sunrise and 45 minutes after sunset).

Earlier Season Opening Date

The Migratory Bird Treaty Act allows the hunting of migratory game birds beginning September 1. Generally, we have tried to guide Tribes to select an opening date for duck hunting of no earlier than September 15. This guidance is based on our concern that hunting prior to September 15 significantly increases the potential for taking ducks that have not yet fully fledged (normally the result of late-nesting or renesting hens) or species misidentification due to the fact that some species and/or sexes are not yet readily distinguishable. While these impacts primarily concern locally-breeding ducks, the potential does exist for the take of molt migrants, i.e., birds that have specifically migrated to an area to complete the molting process. Last year, we allowed GLIFWC to open the general duck season on September 4 in the 1836, 1837, and 1842 ceded areas. While we would prefer that GLIFWC not to implement such a change at this time until we can see any impacts associated with the earlier September opening date, we see no significant conservation implications given the small date change and the relatively small numbers of tribal hunters and are willing to allow GLIFWC to begin the duck season on September 1 in the 1836, 1837, and 1842 ceded areas. We are proposing this change in the interest of our long-term relationship with GLIWFC and the understanding that if significant conservation impacts are discovered, we would adjust the duck season opening date accordingly. However, we note that a September 1 opening date for ducks would preclude any use of electronic calls for Canada geese.

Sandhill Crane Daily Bag Limit

We have no objections to the proposed increase of the sandhill crane daily bag limit from one to two in the 1837 and 1842 Treaty Areas. We note that at least two other Tribes currently have a sandhill crane season (see (c) Fond du Lac Band of Lake Superior Chippewa Indians in Minnesota and (d) Grand Traverse Band of Ottawa and Chippewa Indians in Michigan elsewhere in this proposed rule). All cranes in these current and proposed hunt areas are Eastern Population (EP) sandhill cranes. EP sandhill cranes rebounded from near extirpation in the late 1800s to over 30,000 cranes by 1996, and the 2012 EP sandhill crane fall survey index (87,796) increased by 21 percent from 2011. As a result of this rebound and their continued range expansion, the Atlantic and Mississippi Flyway Councils developed a cooperative management plan for this population, and criteria were developed describing when hunting seasons could be opened. The State of Kentucky held its first hunting season on this population in 2011–12 (harvesting 92 cranes last year), and the State of Tennessee is proposing a new experimental season this year with a maximum allowed harvest of 2,325 cranes (78 FR 45376; July 26, 2013). Further, allowance for Tribal harvest is specifically considered in the EP plan.

GLIFWC reported that only 2 cranes were harvested last year in their inaugural crane season and estimates that no more than 20 cranes will be harvested during the proposed season. We further note that two cranes were harvested in 2011, in the inaugural Fond du Lac sandhill crane season, and none last year. While we support the increase in the crane daily bag limit, given the need to closely monitor the harvest of this species, we suggest that GLIFWC closely track crane harvest, similar to that implemented by Fond du Lac and Grand Traverse, which could include a tag or permit type system as recommended in the EP management plan.

Swan Season

As we stated last year (77 FR 54451, September 5, 2012), we are not opposed to the establishment of a tundra swan season in Wisconsin. Further, we are not conceptually opposed to the establishment of a general swan season. However, the establishment of a new swan season in the ceded territory areas in question involves several significant concerns and special considerations. We believe these concerns need further study and consideration before any implementation of a new swan season in the ceded territories. Our position has not changed.

First, the proposed areas in question are home to significant numbers of trumpeter swans. While the GLIFWC's proposed season is for both tundra and trumpeter swans, there are important differences that require careful consideration. Many cooperators, including GLIFWC, worked together to reestablish a breeding trumpeter swan population in the Great Lakes. These efforts have been largely successful with the removal of this species from Wisconsin's endangered species list in 2009. After a 25-year recovery program, there are currently about 200 breeding pairs in Wisconsin. We have significant concerns at this time concerning the harvest of trumpeter swans by tribal hunters hunting during a swan season. Further, within Wisconsin, the northern ceded territory is an area of high trumpeter swan use containing over 80 percent of the breeding pairs. We believe such areas should be avoided either temporally or geographically to the extent possible. When a hunting season on swans (either tundra, trumpeters, or both) is ultimately implemented, we believe it would be best to focus hunting efforts on the primary tundra swan migration concentrations while avoiding areas of significant trumpeter swan numbers. Unfortunately, most such areas are located outside of the ceded territories of northern Wisconsin. GLIWFC's proposal to not open the season until November 1, when they state that migrant swans have typically arrived into the ceded areas in appreciable numbers, does not alleviate our previously identified concerns.

In addition to the concerns about potential impacts to trumpeter swans, we believe it is imperative that any tribal swan hunting proposal follow the Eastern Population of tundra swans management plan, including a quota

permit system and harvest reporting. The EP tundra swan management plan was cooperatively developed by the Atlantic, Central, and Mississippi Flyway Councils in 2007, and guides the management and harvest of EP tundra swans.

For these reasons, we do not believe that a tribal swan hunting season in the ceded territory should be implemented this year. Given that all these concerns can be worked through, we do not believe that implementation of a swan season is unrealistic. We note that both the Service and the State wildlife agencies have considerable trumpeter swan information that would be helpful in conducting additional biological evaluation and harvest planning, and are available to work with GLIFWC on these issues.

The proposed 2013–14 waterfowl hunting season regulations apply to all treaty areas (except where noted) for GLIFWC as follows:

Ducks

Season Dates: Begin September 1 and end December 31, 2013.

Daily Bag Limit: 50 ducks in the 1937 and 1842 Treaty Area; 30 ducks in the 1836 Treaty Area.

Mergansers

Season Dates: Begin September 1 and end December 31, 2013.

Daily Bag Limit: 10 mergansers.

Geese

Season Dates: Begin September 1 and end December 31, 2013. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting outside of these dates will also be open concurrently for tribal members.

Daily Bag Limit: 20 geese in aggregate.

Other Migratory Birds

A. Coots and Common Moorhens (Common Gallinules)

Season Dates: Begin September 1 and end December 31, 2013.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. Sora and Virginia Rails

Season Dates: Begin September 1 and end December 31, 2013.

Daily Bag and Possession Limits: 20, singly, or in the aggregate, 25.

C. Common Snipe

Season Dates: Begin September 1 and end December 31, 2013.

Daily Bag Limit: 16 common snipe.

D. Woodcock

Season Dates: Begin September 3 and end December 31, 2013.

Daily Bag Limit: 10 woodcock.

E. Mourning Dove 1837 and 1842 Ceded Territories Only

Season Dates: Begin September 1 and end November 9, 2013.

Daily Bag Limit: 15 mourning doves.

F. Sandhill Cranes 1837 and 1842 Ceded Territories Only

Season Dates: Begin September 1 and end December 31, 2013.

Daily Bag Limit: 2 crane.

General Conditions

A. All tribal members will be required to obtain a valid tribal waterfowl hunting permit.

B. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* and *Mille Lacs Band* v. *State of Minnesota* cases. Chapter 10 in each of these model codes regulates ceded territory migratory bird hunting. Both versions of Chapter 10 parallel Federal requirements as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations adopted in response to this proposal.

C. Particular regulations of note include:

1. Nontoxic shot will be required for all waterfowl hunting by tribal members.

2. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

3. There is no possession limit. For purposes of enforcing bag limits, all migratory birds in the possession and custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as taken on reservation lands. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

4. The baiting restrictions included in the respective section 10.05(2)(h) of the model ceded territory conservation codes will be amended to include language which parallels that in place for nontribal members as published at 64 FR 29799, June 3, 1999.

5. The shell limit restrictions included in the respective section 10.05(2)(b) of the model ceded territory conservation codes will be removed.

6. Hunting hours shall be from a half hour before sunrise to 30 minutes after sunset.

We propose to approve the above GLIFWC regulations for the 2013–14 hunting season.

(f) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986–87 hunting season. The Tribe owns all lands on the reservation and has recognized full wildlife management authority. In general, the proposed seasons would be more conservative than allowed by the Federal frameworks of last season and by States in the Pacific Flyway.

The Tribe proposed a 2013–14 waterfowl and Canada goose season beginning October 12, 2013, and a closing date of November 30, 2013. Daily bag and possession limits for waterfowl would be the same as Pacific Flyway States. The Tribe proposes a daily bag limit for Canada geese of two. Other regulations specific to the Pacific Flyway guidelines for New Mexico would be in effect.

During the Jicarilla Game and Fish Department's 2012–13 season, estimated duck harvest was 321, which is within the historical harvest range. The species composition included mainly mallards, gadwall, wigeon, and teal. Northern pintail comprised less than 1 percent of the total harvest in 2011. The estimated harvest of geese was 20 birds.

The proposed regulations are essentially the same as were established last year. The Tribe anticipates the maximum 2013–14 waterfowl harvest would be around 500 ducks and 15 to 25 geese.

We propose to approve the Tribe's requested 2013–14 hunting seasons.

(g) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

The Kalispel Reservation was established by Executive Order in 1914, and currently comprises approximately 4,600 acres. The Tribe owns all Reservation land and has full management authority. The Kalispel Tribe has a fully developed wildlife program with hunting and fishing codes. The Tribe enjoys excellent wildlife management relations with the

State. The Tribe and the State have an operational memorandum of understanding with emphasis on fisheries but also for wildlife.

The nontribal member seasons described below pertain to a 176-acre waterfowl management unit and 800 acres of reservation land with a guide for waterfowl hunting. The Tribe is utilizing this opportunity to rehabilitate an area that needs protection because of past land use practices, as well as to provide additional waterfowl hunting in the area. Beginning in 1996, the requested regulations also included a proposal for Kalispel-member-only migratory bird hunting on Kalispel-ceded lands within Washington, Montana, and Idaho.

For the 2013–14 migratory bird hunting seasons, the Kalispel Tribe proposes tribal and nontribal member waterfowl seasons. The Tribe requests that both duck and goose seasons open at the earliest possible date and close on the latest date under Federal frameworks.

For nontribal hunters on reservation, the Tribe requests the seasons open at the earliest possible date and remain open, for the maximum amount of open days. Specifically, the Tribe requests that the season for ducks begin September 21, 2013, and end September 23, 2013, open again beginning September 28, and end September 30, 2013, and then begin October 1, 2013, and end January 31, 2014. In that period, nontribal hunters would be allowed to hunt approximately 101 days. Hunters should obtain further information on specific hunt days from the Kalispel Tribe.

The Tribe also requests the season for geese run from September 7 to September 15, 2013, and from October 1, 2013, to January 31, 2014. Total number of days should not exceed 107. Nontribal hunters should obtain further information on specific hunt days from the Tribe. Daily bag and possession limits would be the same as those for the State of Washington.

The Tribe reports past nontribal harvest of 1.5 ducks per day. Under the proposal, the Tribe expects harvest to be similar to last year, that is, fewer than 100 geese and 200 ducks.

All other State and Federal regulations contained in 50 CFR part 20, such as use of nontoxic shot and possession of a signed migratory bird hunting stamp, would be required.

For tribal members on Kalispel-ceded lands, the Kalispel Tribe proposes season dates consistent with Federal flyway frameworks. Specifically, the Tribe requests outside frameworks for ducks of October 1, 2013, through January 31, 2014, and for geese of September 1, 2013, through January 31, 2014. The Tribe requests that both duck and goose seasons open at the earliest possible date and close on the latest date under Federal frameworks. During that period, the Tribe proposes that the season run continuously. Daily bag and possession limits would parallel those in the Federal regulations contained in 50 CFR part 20.

The Tribe reports that there was no tribal harvest. Under the proposal, the Tribe expects harvest to be fewer than 200 birds for the season with fewer than 100 geese. Tribal members would be required to possess a signed Federal migratory bird stamp and a tribal ceded lands permit.

We propose to approve the regulations requested by the Kalispel Tribe, provided that the nontribal seasons conform to Treaty limitations and final Federal frameworks for the Pacific Flyway.

(h) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

The Klamath Tribe currently has no reservation, per se. However, the Klamath Tribe has reserved hunting, fishing, and gathering rights within its former reservation boundary. This area of former reservation, granted to the Klamaths by the Treaty of 1864, is over 1 million acres. Tribal natural resource management authority is derived from the Treaty of 1864, and carried out cooperatively under the judicially enforced Consent Decree of 1981. The parties to this Consent Decree are the Federal Government, the State of Oregon, and the Klamath Tribe. The Klamath Indian Game Commission sets the seasons. The tribal biological staff and tribal regulatory enforcement officers monitor tribal harvest by frequent bag checks and hunter interviews.

For the 2013–14 season, we have not yet heard from the Tribe; however, the Tribe usually requests proposed season dates of October 1, 2013, through January 31, 2014. Daily bag limits would be 9 for ducks, 9 for geese, and 9 for coot, with possession limits twice the daily bag limit. Shooting hours would be one-half hour before sunrise to one-half hour after sunset. Steel shot is required.

Based on the number of birds produced in the Klamath Basin, this year's harvest would be similar to last year's. Information on tribal harvest suggests that more than 70 percent of the annual goose harvest is local birds produced in the Klamath Basin.

If we receive a proposal that matches the Tribe's usual request, we propose to approve those 2013–14 special migratory bird hunting regulations.

(i) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)

The Leech Lake Band of Ojibwe is a federally recognized Tribe located in Cass Lake, Minnesota. The reservation employs conservation officers to enforce conservation regulations. The Service and the Tribe have cooperatively established migratory bird hunting regulations since 2000.

For the 2013–14 season, the Tribe requests a duck season starting on September 14 and ending December 31, 2013, and a goose season to run from September 1 through December 31, 2013. Daily bag limits for ducks would be 10, including no more than 5 pintail, 5 canvasback, and 5 black ducks. Daily bag limits for geese would be 10. Possession limits would be twice the daily bag limit. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

The annual harvest by tribal members on the Leech Lake Reservation is estimated at 500 to 1,000 birds.

We propose to approve the Leech Lake Band of Ojibwe's requested 2013–14 special migratory bird hunting season.

(j) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)

The Little River Band of Ottawa Indians is a self-governing, federally recognized Tribe located in Manistee, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season. Ceded lands are located in Lake, Mason, Manistee, and Wexford Counties. The Band normally proposes regulations to govern the hunting of migratory birds by Tribal members within the 1836 Ceded Territory as well as on the Band's Reservation.

For the 2013–14 season, the Little River Band of Ottawa Indians proposes a duck and merganser season from September 15, 2013, through January 20, 2014. A daily bag limit of 12 ducks would include no more than 2 pintail, 2 canvasback, 3 black ducks, 3 wood ducks, 3 redheads, 6 mallards (only 2 of which may be a hen), and 1 hooded merganser. Possession limits would be twice the daily bag limit.

For white-fronted geese, snow geese, and brant, the Tribe proposes a September 20 through November 30, 2013, season. Daily bag limits would be five geese.

For Canada geese only, the Tribe proposes a September 1, 2013, through February 8, 2014, season with a daily bag limit of five. The possession limit would be twice the daily bag limit.

For snipe, woodcock, rails, and mourning doves, the Tribe proposes a September 1 to November 14, 2013, season. The daily bag limit would be 10 common snipe, 5 woodcock, 10 rails, and 10 mourning doves. Possession limits for all species would be twice the daily bag limit.

The Tribe monitors harvest through mail surveys. General conditions are as follows:

A. All tribal members will be required to obtain a valid tribal resource card and 2013–14 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

We plan to approve Little River Band of Ottawa Indians' requested 2013–14 special migratory bird hunting seasons.

(k) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only)

The Little Traverse Bay Bands of Odawa Indians (LTBB) is a self-governing, federally recognized Tribe located in Petoskey, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2013–14 season, the Little Traverse Bay Bands of Odawa Indians propose regulations similar to those of other Tribes in the 1836 treaty area. LTBB proposes the regulations to govern the hunting of migratory birds by tribal members on the LTBB reservation and within the 1836 Treaty Ceded Territory. The tribal member duck and merganser season would run from September 15, 2013, through January 31, 2014. A daily bag limit of 20 ducks and 10 mergansers would include no more than 5 hen mallards, 5 pintail, 5 canvasback, 5 scaup, 5 hooded merganser, 5 black ducks, 5 wood ducks, and 5 redheads.

For Canada geese, the LTBB proposes a September 1, 2013, through February 8, 2014, season. The daily bag limit for Canada geese would be 20 birds. We further note that, based on available data (of major goose migration routes), it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the LTBB. Possession limits are twice the daily bag limit.

For woodcock, the LTBB proposes a September 1 to December 1, 2013, season. The daily bag limit will not exceed 10 birds. For snipe, the LTBB proposes a September 1 to December 31, 2013, season. The daily bag limit will not exceed 16 birds. For mourning doves, the LTBB proposes a September 1 to November 14, 2013, season. The daily bag limit will not exceed 15 birds. For Virginia and sora rails, the LTBB proposes a September 1 to December 31, 2013, season. The daily bag limit will not exceed 20 birds per species. For coots and gallinules, the LTBB proposes a September 15 to December 31, 2013, season. The daily bag limit will not exceed 20 birds per species. The possession limit will not exceed 2 days' bag limit for all birds.

The LTBB also proposes a sandhill crane season to begin September 1 and end December 1, 2013. The daily bag limit will not exceed one bird. The possession limit will not exceed two times the bag limit.

All other Federal regulations contained in 50 CFR part 20 would apply.

Harvest surveys from 2011–12 hunting season indicated that approximately 18 hunters harvested nine different waterfowl species. The LTBB proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. In particular, the LTBB proposes monitoring the harvest of Southern James Bay Canada geese and sandhill cranes to assess any impacts of tribal hunting on the population.

We propose to approve the Little Traverse Bay Bands of Odawa Indians' requested 2013–14 special migratory bird hunting regulations.

(l) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)

The Lower Brule Sioux Tribe first established tribal migratory bird hunting regulations for the Lower Brule Reservation in 1994. The Lower Brule Reservation is about 214,000 acres in size and is located on and adjacent to the Missouri River, south of Pierre. Land ownership on the reservation is mixed, and until recently, the Lower Brule Tribe had full management authority over fish and wildlife via a memorandum of agreement (MOA) with the State of South Dakota. The MOA provided the Tribe jurisdiction over fish and wildlife on reservation lands, including deeded and U.S. Army Corps of Engineers-taken lands. For the 2013–14 season, the two parties have come to an agreement that provides the public a clear understanding of the Lower Brule Sioux Wildlife Department license requirements and hunting season regulations. The Lower Brule Reservation waterfowl season is open to tribal and nontribal hunters.

For the 2013–14 migratory bird hunting season, the Lower Brule Sioux Tribe proposes a nontribal member duck, merganser, and coot season length of 107 days, or the maximum number of days allowed by Federal frameworks in the High Plains Management Unit for this season. The Tribe proposes a duck season from October 12, 2013, through January 17, 2014. The daily bag limit would be six birds, including no more than two hen mallard and five mallards total, two pintail, two redhead, one canvasback, three wood duck, four scaup, and one mottled duck. The daily bag limit for mergansers would be five, only two of which could be a hooded merganser. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits.

The Tribe's proposed nontribal-member Canada goose season would run from November 2, 2013, through February 17, 2014 (107-day season length), with a daily bag limit of three Canada geese. The Tribe's proposed nontribal member white-fronted goose season would run from November 2, 2013, through January 29, 2014, with a daily bag limit concurrent with Federal regulations. The Tribe's proposed nontribal-member light goose season would run from November 2, 2013, through January 12, 2014, and February 2 through March 10, 2014. The light goose daily bag limit would be 20 with no possession limits.

For tribal members, the Lower Brule Sioux Tribe proposes a duck, merganser, and coot season from September 1, 2013, through March 10, 2014. The daily bag limit would be six ducks, including no more than two hen mallard and five mallards total, two pintail, two redheads, one canvasback, three wood ducks, four scaup, and one mottled duck. The daily bag limit for mergansers would be five, only two of which could

be hooded mergansers. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits.

The Tribe's proposed Canada goose season for tribal members would run from September 1, 2013, through March 10, 2014, with a daily bag limit of three Canada geese or the maximum that Federal regulations allow. The Tribe's proposed white-fronted goose tribal season would run from September 1, 2013, through March 10, 2014, with a daily bag limit of two white-fronted geese or the maximum that Federal regulations allow. The Tribe's proposed light goose tribal season would run from September 1, 2013, through March 10, 2014. The light goose daily bag limit would be 20 or the maximum that Federal regulations allow, with no possession limits.

In the 2012–13 season, hunters harvested 414 geese and 658 ducks. In the 2012–13 season, duck harvest species composition was primarily mallard (71 percent), gadwall, and green-winged teal (13 percent each).

The Tribe anticipates a duck harvest similar to those of the previous 3 years and a goose harvest below the target harvest level of 3,000 to 4,000 geese. All basic Federal regulations contained in 50 CFR part 20, including the use of nontoxic shot, Migratory Waterfowl Hunting and Conservation Stamps, etc., would be observed by the Tribe's proposed regulations. In addition, the Lower Brule Sioux Tribe has an official Conservation Code that was established by Tribal Council Resolution in June 1982 and updated in 1996.

We plan to approve the Tribe's requested regulations for the Lower Brule Reservation given that the seasons' dates fall within final Federal flyway frameworks (applies to nontribal hunters only).

(m) Lower Elwha Klallam Tribe, Port Angeles, Washington (Tribal Members Only)

Since 1996, the Service and the Point No Point Treaty Tribes, of which Lower Elwha was one, have cooperated to establish special regulations for migratory bird hunting. The Tribes are now acting independently, and the Lower Elwha Klallam Tribe would like to establish migratory bird hunting regulations for tribal members for the 2013–14 season. The Tribe has a reservation on the Olympic Peninsula in Washington State and is a successor to the signatories of the Treaty of Point No Point of 1855.

For the 2013–14 season, the Lower Elwha Klallam Tribe requests a duck and coot season from September 14, 2013, to January 5, 2014. The daily bag limit will be seven ducks, including no more than two hen mallards, one pintail, one canvasback, and two redheads. The daily bag and possession limit on harlequin duck will be one per season. The coot daily bag limit will be 25. The possession limit will be twice the daily bag limit, except as noted above.

For geese, the Tribe requests a season from September 14, 2013, to January 5, 2014. The daily bag limit will be four, including no more than three light geese. The season on Aleutian Canada geese will be closed.

For brant, the Tribe proposes to close the season.

For mourning doves, band-tailed pigeon, and snipe, the Tribe requests a season from September 14, 2013, to January 5, 2014, with a daily bag limit of 10, 2, and 8, respectively. The possession limit will be twice the daily bag limit.

All Tribal hunters authorized to hunt migratory birds are required to obtain a tribal hunting permit from the Lower Elwha Klallam Tribe pursuant to tribal law. Hunting hours would be from one-half hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

The Tribe typically anticipates harvest to be fewer than 10 birds. Tribal reservation police and Tribal fisheries enforcement officers have the authority to enforce these migratory bird hunting regulations.

The Service proposes to approve the request for special migratory bird hunting regulations for the Lower Elwha Klallam Tribe.

(n) Makah Indian Tribe, Neah Bay, Washington (Tribal Members Only)

The Makah Indian Tribe and the Service have been cooperating to establish special regulations for migratory game birds on the Makah Reservation and traditional hunting land off the Makah Reservation since the 2001–02 hunting season. Lands off the Makah Reservation are those contained within the boundaries of the State of Washington Game Management Units 601–603.

The Makah Indian Tribe proposes a duck and coot hunting season from September 21, 2013, to January 26, 2014. The daily bag limit is seven ducks, including no more than five mallards (only two hen mallard), one canvasback, one pintail, three scaup, and one redhead. The daily bag limit for coots is 25. The Tribe has a year-round closure on wood ducks and harlequin ducks. Shooting hours for all species of waterfowl are one-half hour before sunrise to sunset.

For geese, the Tribe proposes that the season open on September 21, 2013, and close January 26, 2014. The daily bag limit for geese is four and one brant. The Tribe notes that there is a year-round closure on Aleutian and dusky Canada geese.

For band-tailed pigeons, the Tribe proposes that the season open September 14, 2013, and close October 27, 2013. The daily bag limit for band-tailed pigeons is two.

The Tribe anticipates that harvest under this regulation will be relatively low since there are no known dedicated waterfowl hunters and any harvest of waterfowl or band-tailed pigeons is usually incidental to hunting for other species, such as deer, elk, and bear. The Tribe expects fewer than 50 ducks and 10 geese to be harvested during the 2013–14 migratory bird hunting season.

All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also usually proposed by the Tribe:

(1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area.

(2) Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl.

(3) The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within 1 mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation.

(4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited.

(5) Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited.

(6) The use of dogs is permitted to hunt waterfowl.

The Service proposes to approve the Makah Indian Tribe's requested 2013–14 special migratory bird hunting regulations.

(o) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters)

Since 1985, we have established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The Navajo Nation

owns almost all lands on the reservation and has full wildlife management authority.

For the 2013–14 season, we have not yet heard from the Navajo Nation; however, they usually request special migratory bird hunting regulations on the reservation for both tribal and nontribal hunters for ducks (including mergansers), Canada geese, coots, band-tailed pigeons, and mourning doves. For ducks, mergansers, Canada geese, and coots, the Tribe requests the earliest opening dates and longest seasons, and the same daily bag and possession limits allowed to Pacific Flyway States under final Federal frameworks.

For both mourning dove and band-tailed pigeons, the Navajo Nation usually proposes seasons of September 1 through September 30, 2013, with daily bag limits of 10 and 5, respectively. Possession limits would be twice the daily bag limits.

The Nation requires tribal members and nonmembers to comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp), which must be signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

The Tribe usually anticipates a total harvest of fewer than 500 mourning doves; fewer than 10 band-tailed pigeons; fewer than 1,000 ducks, coots, and mergansers; and fewer than 1,000 Canada geese for the 2013–14 season. The Tribe measures harvest by mail survey forms. Through the established Navajo Nation Code, titles 17 and 18, and 23 U.S.C. 1165, the Tribe will take action to close the season, reduce bag limits, or take other appropriate actions if the harvest is detrimental to the migratory bird resource.

If we receive a proposal that matches the Navajo Nation's usual request, we propose to approve those 2013–14 special migratory bird hunting regulations.

(p) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Since 1991–92, the Oneida Tribe of Indians of Wisconsin and the Service have cooperated to establish uniform regulations for migratory bird hunting by tribal and nontribal hunters within the original Oneida Reservation boundaries. Since 1985, the Oneida Tribe's Conservation Department has enforced the Tribe's hunting regulations within those original reservation limits. The Oneida Tribe also has a good working relationship with the State of Wisconsin and the majority of the seasons and limits are the same for the Tribe and Wisconsin.

In a May 28, 2013, letter, the Tribe proposes special migratory bird hunting regulations. For ducks, the Tribe describes the general outside dates as being September 14 through December 1, 2013, with a closed segment of November 16 to 24, 2013. The Tribe proposes a daily bag limit of six birds, which could include no more than six mallards (three hen mallards), six wood duck, one redhead, two pintail, and one hooded merganser.

For geese, the Tribe requests a season between September 1 and September 13, 2013, with a daily bag limit of five Canada geese, and three from September 14, 2013, through December 29, 2013. The Tribe will close the season November 16 to 24, 2013. If a quota of 300 geese is attained before the season concludes, the Tribe will recommend closing the season early.

For woodcock, the Tribe proposes a season between September 7 and November 3, 2013, with a daily bag and possession limit of 5 and 10, respectively.

For mourning dove, the Tribe proposes a season between September 7 and November 3, 2013, with a daily bag and possession limit of 10 and 20, respectively.

The Tribe proposes shooting hours be one-half hour before sunrise to one-half hour after sunset. Nontribal hunters hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including shooting hours of one-half hour before sunrise to sunset, season dates, and daily bag limits. Tribal members and nontribal hunters hunting on the Reservation or on lands under the jurisdiction of the Tribe must observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Oneida members would be exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

The Service proposes to approve the request for 2013–14 special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin.

(q) Point No Point Treaty Council Tribes, Kingston, Washington (Tribal Members Only)

We are establishing uniform migratory bird hunting regulations for tribal members on behalf of the Point No Point Treaty Council Tribes, consisting of the Port Gamble S'Klallam and Jamestown S'Klallam Tribes. The two tribes have reservations and ceded areas in northwestern Washington State and are the successors to the signatories of the Treaty of Point No Point of 1855. These proposed regulations will apply to tribal members both on and off reservations within the Point No Point Treaty Areas; however, the Port Gamble S'Klallam and Jamestown S'Klallam Tribal season dates differ only where indicated below.

For the 2013–14 season, the Point No Point Treaty Council requests special migratory bird hunting regulations for the 2013–14 hunting season for both the Jamestown S'Klallam and Port Gamble S'Klallam Tribes. For ducks and coots hunting season, the Jamestown S'Klallam Tribe season would open September 15, 2013, and close February 1, 2014. The Port Gamble S'Klallam Tribes season would open from September 2, 2013, to January 21, 2014. The daily bag limit would be seven ducks, including no more than two hen mallards, one canvasback, one pintail, two redhead, and four scoters. The daily bag limit for coots would be 25. The daily bag limit and possession limit on harlequin ducks would be one per season. The daily possession limits are double the daily bag limits except where noted.

For geese, the Point No Point Treaty Council proposes the season open on September 15, 2013, and close March 10, 2014. The daily bag limit for geese would be four, not to include more than three light geese. The Council notes that there is a year-round closure on Aleutian and cackling Canada geese. For brant, the Council proposes the season open on November 9, 2013, and close January 31, 2014, for the Port Gamble S'Klallam Tribe, and open on January 15 and close January 31, 2014, for the Jamestown S'Klallam Tribe. The daily bag limit for brant would be two.

For band-tailed pigeons, the Port Gamble S'Klallam Tribe season would open September 2, 2013, and close March 9, 2014. The Jamestown S'Klallam Tribe season would open September 15, 2013, and close March 10, 2014. The daily bag limit for band-tailed pigeons would be two and eight for snipe. For snipe, the Port Gamble S'Klallam Tribe season would open September 1, 2013, and close March 9, 2014. The Jamestown S'Klallam Tribe season would open September 15, 2013, and close March 10, 2014. The daily bag limit for snipe would be eight. For mourning dove, the Port Gamble S'Klallam Tribe season would open September 2, 2013, and close January 31, 2014. The Jamestown S'Klallam

Tribe would open September 15, 2013, and close January 14, 2014. The daily bag limit for mourning dove would be 10.

The Tribe anticipates a total harvest of fewer than 200 birds for the 2013–14 season. The tribal fish and wildlife enforcement officers have the authority to enforce these tribal regulations.

We propose to approve the Point No Point Treaty Council Tribe's requested 2013–14 special migratory bird seasons.

(r) Sault Ste. Marie Tribe of Chippewa Indians, Sault Ste. Marie, Michigan (Tribal Members Only)

The Sault Ste. Marie Tribe of Chippewa Indians is a federally recognized, self-governing Indian Tribe, distributed throughout the eastern Upper Peninsula and northern Lower Peninsula of Michigan. The Tribe has retained the right to hunt, fish, trap, and gather on the lands ceded in the Treaty of Washington (1836).

In a May 31, 2013, letter, the Tribe proposes special migratory bird hunting regulations. For ducks, mergansers, and common snipe, the Tribe proposes outside dates as September 15 through December 31, 2013. The Tribe proposes a daily bag limit of 20 ducks, which could include no more than 10 mallards (5 hen mallards), 5 wood duck, 5 black duck, and 5 canvasback. The merganser daily bag limit is 10 in the aggregate and 16 for common snipe.

For geese, coot, gallinule, sora, and Virginia rail, the Tribe requests a season from September 1 to December 31, 2013. The daily bag limit for geese is 20, in the aggregate. The daily bag limit for coot, gallinule, sora, and Virginia rail is 20 in the aggregate.

For woodcock, the Tribe proposes a season between September 2 and December 1, 2013, with a daily bag and possession limit of 10 and 20, respectively.

For mourning dove, the Tribe proposes a season between September 1 and November 14, 2013, with a daily bag and possession limit of 10 and 20, respectively.

In 2012, the total estimated duck and geese harvest was 2,858. All Sault Ste. Marie Tribe members exercising hunting treaty rights within the 1836 Ceded Territory are required to submit annual harvest reports including date of harvest, number and species harvested, and location of harvest. Hunting hours would be from one-half hour before sunrise to one-half hour after sunset. All other regulations in 50 CFR part 20 apply including the use of only nontoxic shot for hunting waterfowl.

The Service proposes to approve the request for 2013–14 special migratory bird hunting regulations for the Sault Ste. Marie Tribe of Chippewa Indians.

(s) Shoshone–Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters)

Almost all of the Fort Hall Indian Reservation is tribally owned. The Tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by nontribal members on reservation lands owned by non-Indians. As a compromise, since 1985, we have established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the Tribes and provided for different season dates than in the remainder of the State. We agreed to the season dates because they would provide additional protection to mallards and pintails. The State of Idaho concurred with the zoning arrangement. We have no objection to the State's use of this zone again in the 2013–14 hunting season, provided the duck and goose hunting season dates are the same as on the reservation.

In a proposal for the 2013–14 hunting season, the Shoshone-Bannock Tribes request a continuous duck (including mergansers) season, with the maximum number of days and the same daily bag and possession limits permitted for Pacific Flyway States under the final Federal frameworks. The Tribes propose a duck and coot season with, if the same number of hunting days is permitted as last year, an opening date of October 5, 2013, and a closing date of January 18, 2014. The Tribes anticipate harvest will be between 2,000 and 5,000 ducks.

The Tribes also request a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted in Idaho under Federal frameworks. The Tribes propose that, if the same number of hunting days is permitted as in previous years, the season would have an opening date of October 5, 2013, and a closing date of January 18, 2014. The Tribes anticipate harvest will be between 4,000 and 6,000 geese.

The Tribes request a common snipe season with the maximum number of days and the same daily bag and possession limits permitted in Idaho under Federal frameworks. The Tribes propose that, if the same number of hunting days is permitted as in previous years, the season would have an opening date of October 5, 2013, and a closing date of January 18, 2014.

Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours, use of steel shot, and manner of taking. Special regulations established by the Shoshone–Bannock Tribes also apply on the reservation.

We note that the requested regulations are nearly identical to those of last year, and we propose to approve them for the 2013–14 hunting season given that the seasons' dates fall within the final Federal flyway frameworks (applies to nontribal hunters only).

(t) Skokomish Tribe, Shelton, Washington (Tribal Members Only)

Since 1996, the Service and the Point No Point Treaty Tribes, of which the Skokomish Tribe was one, have cooperated to establish special regulations for migratory bird hunting. The Tribes have been acting independently since 2005, and the Skokomish Tribe would like to establish migratory bird hunting regulations for tribal members for the 2013–14 season. The Tribe has a reservation on the Olympic Peninsula in Washington State and is a successor to the signatories of the Treaty of Point No Point of 1855.

The Skokomish Tribe requests a duck and coot season from September 16, 2013, to February 28, 2014. The daily bag limit is seven ducks, including no more than two hen mallards, one pintail, one canvasback, and two redheads. The daily bag and possession limit on harlequin duck is one per season. The coot daily bag limit is 25. The possession limit is twice the daily bag limit, except as noted above.

For geese, the Tribe requests a season from September 16, 2013, to February 28, 2014. The daily bag limit is four, including no more than three light geese. The season on Aleutian Canada geese is closed. For brant, the Tribe proposes a season from November 1, 2013, to February 15, 2014, with a daily bag limit of two. The possession limit is twice the daily bag limit.

For mourning doves, band-tailed pigeon, and snipe, the Tribe requests a season from September 16, 2013, to February 28, 2014, with a daily bag limit of 10, 2, and 8, respectively. The possession limit is twice the daily bag limit.

All Tribal hunters authorized to hunt migratory birds are required to obtain a tribal hunting permit from the Skokomish Tribe pursuant to tribal law. Hunting hours would be from one-half hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is

unlawful to use or possess lead shot while hunting waterfowl.

The Tribe anticipates harvest to be fewer than 150 birds. The Skokomish Public Safety Office enforcement officers have the authority to enforce these migratory bird hunting regulations.

We propose to approve the Skokomish Tribe's 2013–14 requested migratory bird hunting season.

(u) Spokane Tribe of Indians, Spokane Indian Reservation, Wellpinit, Washington (Tribal Members Only)

The Spokane Tribe of Indians wishes to establish waterfowl seasons on their reservation for its membership to access as an additional resource. An established waterfowl season on the reservation will allow access to a resource for members to continue practicing a subsistence lifestyle. The Spokane Indian Reservation is located in northeastern Washington State. The reservation comprises approximately 157,000 acres. The boundaries of the Reservation are the Columbia River to the west, the Spokane River to the south (now Lake Roosevelt), Tshimikn Creek to the east, and the 48th Parallel as the north boundary. Tribal membership comprises approximately 2,300 enrolled Spokane Tribal Members.

These proposed regulations would allow Tribal Members, spouses of Spokane Tribal Members, and first-generation descendants of a Spokane Tribal Member with a tribal permit and Federal Waterfowl stamp an opportunity to utilize the reservation and ceded lands for waterfowl hunting. These regulations would also benefit tribal membership through access to this resource throughout Spokane Tribal ceded lands in eastern Washington. By Spokane Tribal Referendum, spouses of Spokane Tribal Members and children of Spokane Tribal Members not enrolled are allowed to harvest game animals within the Spokane Indian Reservation with the issuance of hunting permits.

For the 2013–14 season, the Tribe requests to establish duck seasons that would run from September 2, 2013, through January 31, 2014. The tribe is requesting the daily bag limit for ducks to be consistent with final Federal frameworks. The possession limit is twice the daily bag limit.

The Tribe proposes a season on geese starting September 2, 2013, and ending on January 31, 2014. The tribe is requesting the daily bag limit for geese to be consistent with final Federal frameworks. The possession limit is twice the daily bag limit.

Based on the quantity of requests the Spokane Tribe of Indians has received, the tribe anticipates harvest levels for the 2013–14 season for both ducks and geese to be below 100 total birds with goose harvest at fewer than 50. Hunter success will be monitored through mandatory harvest reports returned within 30 days of the season closure.

We propose to approve the Spokane Tribe's requested 2013–14 special migratory bird hunting regulations.

(v) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)

The Squaxin Island Tribe of Washington and the Service have cooperated since 1995, to establish special tribal migratory bird hunting regulations. These special regulations apply to tribal members on the Squaxin Island Reservation, located in western Washington near Olympia, and all lands within the traditional hunting grounds of the Squaxin Island Tribe.

Based on past experience, for the 2013–14 season, we expect the Tribe will request to establish duck and coot seasons that would run from September 1, 2013, through January 15, 2014. The daily bag limit for ducks would be five per day and could include only one canvasback. The season on harlequin ducks is closed. For coots, the daily bag limit is 25. For snipe, the Tribe will likely propose that the season start on September 15, 2013, and end on January 15, 2014. The daily bag limit for snipe would be eight. For band-tailed pigeon, we expect the Tribe to propose that the season start on September 1, 2013, and end on December 31, 2013. The daily bag limit would be five. The possession limit would be twice the daily bag limit.

We expect the Tribe to propose a season on geese starting September 15, 2013, and ending on January 15, 2014. The daily bag limit for geese would be four, including no more than two snow geese. The season on Aleutian and cackling Canada geese would be closed. For brant, the Tribe will likely propose that the season start on September 1, 2013, and end on December 31, 2013. The daily bag limit for brant would be two. The possession limit would be twice the daily bag limit.

If we receive a proposal that matches the Tribe's usual request, we propose to approve those 2013–14 special migratory bird hunting regulations.

(w) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only)

The Stillaguamish Tribe of Indians and the Service have cooperated to establish special regulations for migratory game birds since 2001. For the 2013–14 season, the Tribe requests regulations to hunt all open and unclaimed lands under the Treaty of Point Elliott of January 22, 1855, including their main hunting grounds around Camano Island, Skagit Flats, and Port Susan to the border of the Tulalip Tribes Reservation. Ceded lands are located in Whatcom, Skagit, Snohomish, and Kings Counties, and a portion of Pierce County, Washington. The Stillaguamish Tribe of Indians is a federally recognized Tribe and reserves the Treaty Right to hunt (*U.S.* v. *Washington*).

The Tribe proposes that duck (including mergansers) and goose seasons run from October 1, 2013, to February 15, 2014. The daily bag limit on ducks (including sea ducks and mergansers) is 10. For geese, the daily bag limit is six. Possession limits are totals of these two daily bag limits.

The Tribe proposes that coot, brant, and snipe seasons run from October 1, 2013, to January 31, 2014. The daily bag limit for coot is 25. The daily bag limit on brant is three. The daily bag limit for snipe is 10. Possession limits are twice the daily bag limit.

The Tribe proposes that band-tailed pigeon and dove seasons run from September 1, 2013, to October 31, 2013. The daily bag limit for band-tailed pigeon is four. The daily bag limit on dove is 10. Possession limits are twice the daily bag limit.

Harvest is regulated by a punch card system. Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal law enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

The Tribe anticipates a total harvest of 200 ducks, 100 geese, 50 mergansers, 100 coots, and 100 snipe. Anticipated harvest needs include subsistence and ceremonial needs. Certain species may be closed to hunting for conservation purposes, and consideration for the needs of certain species will be addressed.

The Service proposes to approve the Stillaguamish Tribe's request for 2013–14 special migratory bird hunting regulations for the Stillaguamish Tribe of Indians.

(x) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

In 1996, the Service and the Swinomish Indian Tribal Community began cooperating to establish special regulations for migratory bird hunting. The Swinomish Indian Tribal

Community is a federally recognized Indian Tribe consisting of the Swinomish, Lower Skagit, Samish, and Kikialous. The Swinomish Reservation was established by the Treaty of Point Elliott of January 22, 1855, and lies in the Puget Sound area north of Seattle, Washington.

For the 2013–14 season, the Tribal Community requests to establish a migratory bird hunting season on all areas that are open and unclaimed and consistent with the meaning of the treaty. The Tribal Community requests to establish duck, merganser, Canada goose, brant, and coot seasons opening on the earliest possible date allowed by the final Federal frameworks for the Pacific Flyway and closing 30 days after the State of Washington closes its season. On reservation, the Tribal Community requests to establish duck, merganser, Canada goose, brant, and coot seasons opening on the earliest possible date allowed by the final Federal frameworks for the Pacific Flyway and closing March 9, 2014. The Swinomish Indian Tribal Community requests an additional three birds of each species over the numbers allowed by the State for daily bag and possession limits.

The Community anticipates that the regulations will result in the harvest of approximately 600 ducks and 200 geese. The Swinomish utilize a report card and permit system to monitor harvest and will implement steps to limit harvest where conservation is needed. All tribal regulations will be enforced by tribal fish and game officers.

We believe the estimated harvest by the Swinomish will be minimal and will not adversely affect migratory bird populations. We propose to approve the Tribe's requested 2013–14 special migratory bird hunting regulations.

(y) The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)

The Tulalip Tribes are the successors in interest to the Tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes' government is located on the Tulalip Indian Reservation just north of the City of Everett in Snohomish County, Washington. The Tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority. All lands within the boundaries of the Tulalip Tribes Reservation are closed to nonmember hunting unless opened by Tulalip Tribal regulations.

The Tribe proposes tribal hunting regulations for the 2013–14 season. Migratory waterfowl hunting by Tulalip Tribal members is authorized by Tulalip Tribal Ordinance No. 67. For ducks, mergansers, coot, and snipe, the proposed season for tribal members is from September 4, 2013, through February 29, 2014. Daily bag and possession limits would be 7 and 14 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail, and wood duck, the bag and possession limits would be the same as those established in accordance with final Federal frameworks. For coot, daily bag and possession limits are 25 and 50, respectively, and for snipe 8 and 16, respectively. Ceremonial hunting may be authorized by the Department of Natural Resources at any time upon application of a qualified tribal member. Such a hunt must have a bag limit designed to limit harvest only to those birds necessary to provide for the ceremony.

For geese, tribal members propose a season from September 7, 2013, through February 29, 2014. The goose daily bag and possession limits would be 7 and 14, respectively, except that the bag limits for brant, cackling Canada geese, and dusky Canada geese would be those established in accordance with final Federal frameworks.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the Tribe. Each nontribal hunter 16 years of age and older hunting pursuant to Tulalip Tribes' Ordinance No. 67 must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Each hunter must validate stamps by signing across the face.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, harvest information indicates a total take by tribal and nontribal hunters of fewer than 1,000 ducks and 500 geese annually.

We propose to approve the Tulalip Tribe's request for 2013–14 special migratory bird hunting regulations.

(z) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only)

The Upper Skagit Indian Tribe and the Service have cooperated to establish special regulations for migratory game birds since 2001. The Tribe has jurisdiction over lands within Skagit, Island, and Whatcom Counties, Washington. The Tribe issues tribal hunters a harvest report card that will be shared with the State of Washington.

For the 2013–14 season, the Tribe requests a duck season starting October 1, 2013, and ending February 28, 2014. The Tribe proposes a daily bag limit of 15 with a possession limit of 20. The Tribe requests a coot season starting October 1, 2013, and ending February 15, 2014. The coot daily bag limit is 20 with a possession limit of 30.

The Tribe proposes a goose season from October 1, 2013, to February 28, 2014, with a daily bag limit of 7 geese and a possession limit of 10. For brant, the Tribe proposes a season from November 1 to November 10, 2013, with a daily bag and possession limit of 2.

The Tribe proposes a mourning dove season between September 1 and December 31, 2013, with a daily bag limit of 12 and possession limit of 15.

The anticipated migratory bird harvest under this proposal would be 100 ducks, 5 geese, 2 brant, and 10 coots. Tribal members must have the tribal identification and tribal harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be 15 minutes before official sunrise to 15 minutes after official sunset.

The Service proposes to approve the request for 2013–14 special migratory bird hunting regulations for the Upper Skagit Indian Tribe.

(aa) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

The Wampanoag Tribe of Gay Head is a federally recognized Tribe located on the island of Martha's Vineyard in Massachusetts. The Tribe has approximately 560 acres of land, which it manages for wildlife through its natural resources department. The Tribe also enforces its own wildlife laws and regulations through the natural resources department.

For the 2013–14 season, the Tribe proposes a duck season of October 14, 2013, through February 22, 2014. The Tribe proposes a daily bag limit of eight birds, which could include no more than four hen mallards, four mottled ducks, one fulvous whistling duck, four mergansers, three scaup, two hooded mergansers, three wood ducks, one canvasback, two redheads, two pintail, and four of all other species not listed. The season for harlequin ducks is closed. The Tribe proposes a teal (green-winged and blue) season of October 10, 2013, through February 22, 2014. A

daily bag limit of six teal would be in addition to the daily bag limit for ducks.

For sea ducks, the Tribe proposes a season between October 7, 2013, and February 22, 2014, with a daily bag limit of seven, which could include no more than one hen eider and four of any one species unless otherwise noted above.

For Canada geese, the Tribe requests a season between September 4 and September 21, 2013, and October 28, 2013, and February 22, 2014, with a daily bag limit of 8 Canada geese. For snow geese, the tribe requests a season between September 4 to September 21, 2013, and November 25, 2013, to February 22, 2014, with a daily bag limit of 15 snow geese.

For woodcock, the Tribe proposes a season between October 10 and November 23, 2013, with a daily bag limit of three. For sora and Virginia rails, the Tribe requests a season of September 2, 2013, through November 10, 2013, with a daily bag limit of 5 sora and 10 Virginia rails. For snipe, the Tribe requests a season of September 2, 2013, through December 16, 2013, with a daily bag limit of 8.

Prior to 2012, the Tribe had 22 registered tribal hunters and estimates harvest to be no more than 15 geese, 25 mallards, 25 teal, 50 black ducks, and 50 of all other species combined. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20. The Tribe requires hunters to register with the Harvest Information Program.

We propose to approve the Wampanoag Tribe of Gay Head's requested 2013–14 special migratory bird hunting regulations.

(bb) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only)

The White Earth Band of Ojibwe is a federally recognized tribe located in northwest Minnesota and encompasses all of Mahnomen County and parts of Becker and Clearwater Counties. The reservation employs conservation officers to enforce migratory bird regulations. The Tribe and the Service first cooperated to establish special tribal regulations in 1999.

For the 2013–14 migratory bird hunting season, we anticipate that the White Earth Band of Ojibwe will request a duck season to start September 17 and end December 11, 2013. For ducks, they usually request a daily bag limit of 10, including no more than 2 mallards, 1 pintail, and 1 canvasback. For mergansers, the Tribe proposes the season to start September 17 and end December 18, 2013. The merganser daily bag limit would be five with no more than two hooded mergansers. For geese, the Tribe usually proposes an early season from September 1 through September 25, 2013, and a late season from September 26, 2013, through December 19, 2013. The early season daily bag limit is eight geese, and the late season daily bag limit is five geese.

For coots, dove, rail, woodcock, and snipe, the Tribe usually proposes a September 1 through November 30, 2013, season with daily bag limits of 20 coots, 25 doves, 25 rails, 10 woodcock, and 10 snipe. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

Based on past harvest surveys, the Tribe anticipates harvest of 1,000 to 2,000 Canada geese and 1,000 to 1,500 ducks. The White Earth Reservation Tribal Council employs four full-time conservation officers to enforce migratory bird regulations.

If we receive a proposal that matches the White Earth Band of Ojibwe's usual request, we propose to approve those 2013–14 special migratory bird hunting regulations.

(cc) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)

The White Mountain Apache Tribe owns all reservation lands, and the Tribe has recognized full wildlife management authority. As in past years, the White Mountain Apache Tribe has requested regulations that are essentially unchanged from those agreed to since the 1997–98 hunting year.

The hunting zone for waterfowl is restricted and is described as: The length of the Black River west of the Bonito Creek and Black River confluence and the entire length of the Salt River forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 5, 6, and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3, will be open to waterfowl hunting during the 2013–14 season. The length of the Black River east of the Black River/Bonito Creek confluence is closed to waterfowl hunting. All other waters of the reservation would be closed to waterfowl hunting for the 2013–14 season.

For nontribal and tribal hunters, the Tribe proposes a continuous duck, coot, merganser, gallinule, and moorhen hunting season, with an opening date of October 19, 2013, and a closing date of January 26, 2014. The Tribe proposes a separate pintail and canvasback season, with an opening date of October 19, 2013, and a closing date of December 1, 2013. The season on scaup is closed. The Tribe proposes a daily duck (including mergansers) bag limit of seven, which may include no more than two redheads, two pintail, seven mallards (including no more than two hen mallards), and one canvasback. The daily bag limit for coots, gallinules, and moorhens would be 25, singly or in the aggregate.

For geese, the Tribe proposes a season from October 19, 2013, through January 26, 2014. Hunting would be limited to Canada geese, and the daily bag limit would be three.

Season dates for band-tailed pigeons and mourning doves would run from September 1, and end September 15, 2013, in Wildlife Management Unit 10 and all areas south of Y–70 and Y–10 in Wildlife Management Unit 7, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 10, respectively.

Possession limits for the above species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. There would be no open season for sandhill cranes, rails, and snipe on the White Mountain Apache lands under this proposal. A number of special regulations apply to tribal and nontribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

We plan to approve the White Mountain Apache Tribe's requested 2013–14 special migratory bird hunting regulations.

(dd) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters)

The Yankton Sioux Tribe has yet to submit a waterfowl hunting proposal for the 2013–14 season. The Yankton Sioux tribal waterfowl hunting season usually would be open to both tribal members and nontribal hunters. The waterfowl hunting regulations would apply to tribal and trust lands within the external boundaries of the reservation.

For ducks (including mergansers) and coots, we expect the Yankton Sioux Tribe to, as usual, propose a season starting October 9, 2013, and running for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be six ducks, which may include no more than five mallards (no more than two hens), one canvasback (when the season is open), two redheads, three scaup, one pintail, or two wood ducks. The bag limit for mergansers would be five, which would

include no more than one hooded merganser. The coot daily bag limit would be 15.

For geese, the Tribe will likely request a dark goose (Canada geese, brant, white-fronted geese) season starting October 29, 2013, and closing January 31, 2014. The daily bag limit would be three geese (including no more than one white-fronted goose or brant). Possession limits would be twice the daily bag limit.

For white geese, the proposed hunting season would start October 29, 2013, and run for the maximum amount of days allowed under the final Federal frameworks for the State of South Dakota. Daily bag and possession limits would equal the maximum allowed under Federal frameworks.

All hunters would have to be in possession of a valid tribal license while hunting on Yankton Sioux trust lands. Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and the manner of taking. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

During the 2005–06 hunting season, the Tribe reported that 90 nontribal hunters took 400 Canada geese, 75 light geese, and 90 ducks. Forty-five tribal members harvested fewer than 50 geese and 50 ducks.

If we receive a proposal that matches the Tribe's usual request, we propose to approve those 2013–14 special migratory bird hunting regulations.

Public Comments

The Department of the Interior's policy is, whenever possible, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgating final migratory game bird hunting regulations, we will consider all comments we receive. These comments, and any additional information we receive, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by email or fax. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section. We will post all comments in their entirety—including your personal identifying information—on *http://www.regulations.gov.* Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Room 4107, 4501 North Fairfax Drive, Arlington, VA 22203.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in the preambles of any final rules.

Required Determinations

Based on our most current data, we are affirming our required determinations made in earlier proposed rules; for descriptions of our actions to ensure compliance with the following statutes and Executive Orders, see our April 9, June 14, and July 26, 2013, proposed rules (78 FR 21200, 78 FR 35844, and 78 FR 45376):

- National Environmental Policy Act (NEPA)
- Regulatory Planning and Review (Executive Orders 12866 and 13563)
- Endangered Species Act;
- Regulatory Flexibility Act;
- Small Business Regulatory Enforcement Fairness Act;
- Paperwork Reduction Act;
- Unfunded Mandates Reform Act;
- Executive Orders 12630, 12988, 13175, 13132, and 13211.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2013–14 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: July 26, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–18642 Filed 8–1–13; 8:45 am]

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Vol. 78, No. 149

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CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**

Last List July 29, 2013

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